

# **CITY OF HAMPTON PROCUREMENT OFFICE**

Division of Finance  
Community, Municipal Services, Education  
Hampton, Virginia

**PROJECT NO. 13-42/A**

**EXTERIOR WALL REPAIRS**

**(FLEET MANAGEMENT &  
COMMUNITY SERVICES  
BUILDINGS)**

Instructions to Vendors  
    Invitation to Bid  
    General Conditions

Contract Documents  
    (To be completed by successful vendor)

Specifications  
    (For reference only; specifications to be obtained from the Procurement  
    Office)

Division 01	General Requirements
Division 02	Existing Conditions
Division 04	Masonry
Division 05	Metals
Division 07	Thermal and Moisture Protection
Division 09	Finishes
Appendix	Limited Asbestos and Lead Based Paint Survey

Drawings  
    (For reference only; drawings to be obtained from the Procurement Office)

Sheet G-001	Title Sheet
Sheet S-101	Floor Plan and Details – Fleet Management
Sheet S-102	Roof Plan and Details – Fleet Management
Sheet S-103	Floor Plan – Community Services Building
Sheet S-201	Elevations and Details – Fleet Management

Pre-Bid Question Form

Response Forms  
    Bid Sheet  
    Non-Collusive/Nondiscrimination

**PREPARATION/SUBMITTAL/RECEIPT OF RESPONSES  
INSTRUCTIONS TO VENDORS**

**I. PREPARATION**

1.1 - If response forms are attached, they shall be used. Responses not so submitted on said forms or not fully completed with all information may be declared nonresponsive. All documents shall be signed in ink. Any corrections to entries made on forms shall be made in ink and initialed by the person signing the response. Bids containing any conditions, omissions, unexplained alterations or items not called for in the proposal, or irregularities of any kind, may be rejected by the City as being incomplete or nonresponsive.

1.2 - General questions, requests for explanations, or interpretations of documents shall be made as directed. No oral explanation in regard to the meaning of drawings and specifications will be made and no oral instructions will be given before the award of the contract.

1.3 - During preparation and prior to opening, each vendor shall not divulge, discuss or compare his response with others, and shall not collude with any other party to a response. A signed response shall be taken as an indication that the vendor fully understands the Commonwealth of Virginia's Conflict of Interest Act and the Commonwealth of Virginia's Ethics in Public Procurement Act and that his actions in no way violate any of the provisions therein.

1.4 - Unless this solicitation contains a clear statement that only one certain brand, make or manufacturer is acceptable and a clear reason is stated why such is so, the name of a certain brand, make or manufacturer does not restrict vendors to that named. Such only conveys the general style, type, character, and quality of that desired. During evaluation of responses, it shall be the sole discretion of the soliciting organization to determine what is equal, considering quality, workmanship, economy of operation, and suitability for the purpose intended.

1.5 - Prices shall be all inclusive for the scope of the solicitation. Where applicable, the following shall apply. All shipments shall be F.O.B. destination, freight included. Delivery shall be inside as directed at the address indicated. Required delivery times and terms of payment shall be clearly stated.

**II. SUBMISSION**

2.1 - Every bidder organized as a stock or non stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership must be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia, as amended, or as otherwise required by law. If awarded the Contract, the bidder shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the Contract. Doing so shall be

deemed a violation of Section 2.2-4311.2 and the bidder understands and agrees that the City may void the contract if the bidder fails to comply with this provision.

2.2 – Bid withdrawals or modifications to responses already submitted will be allowed if such notice is given in writing and received at the designated location from bidders prior to the stated deadline. Such modifications shall not reveal to the total amount of either the original or modified submittal.

2.3 - Responses may be withdrawn at any time prior to their being opened.

2.4 - No liability shall accrue to the soliciting organization from the acceptance of any response. Financial obligations on behalf of the soliciting organization shall occur only through the award of a contract and/or purchase order in accordance with applicable law.

### III. RECEIPT OF BIDS

3.1- Bids will be received on or before the date and the hour and at the place stipulated in the Invitation to Bid and may be modified by subsequent Addenda. Consolidated Procurement Division operating hours are M-F 8:00 AM until 4:30 PM.

3.2 – It is the responsibility of the bidder to assure that his bid and any bid modifications are delivered to the place designated for receipt of bids by the date and hour (deadline) set for receipt of bids. Therefore, it is the bidder's responsibility to take into account all factors which may impact on its bid deliverer/courier's ability to deliver the bid and to implement whatever actions are necessary to have the bid delivered to the proper bid receipt location prior to the bid receipt deadline. No bids or modifications submitted or offered after the date and hour designated for receipt of bids will be accepted or considered.

3.3 – The Procurement Officer is the City's representative designated to receive bids at the time and place noted in the ITB and to open the bids received at the appointed time.

3.4 – The official time used for the receipt of responses is determined by reference to the clock designated by the Procurement Officer. The Procurement Officer shall determine when the Bid Receipt Deadline has arrived and shall announce that the Deadline has arrived and that no further bids or bid modifications will be accepted. All bids and bid modifications in the possession of the Procurement Officer and his assistants at the time the announcement is completed are deemed to be timely, whether or not the bid envelope has been physically date/time stamped or otherwise marked by the time the Procurement Officer makes the deadline announcement.

**ITB Issue date: Tuesday, January 15, 2013**

**Invitation to Bid No. 13-42/A**

**Procurement Officer: Octavia Andrew**

**Email: [oandrew@hampton.gov](mailto:oandrew@hampton.gov)**

**Ph: 757.727.2200 /Fax: 757.727.2207**

The Director of Finance or his designated representative, on behalf of the City of Hampton, will accept SEALED written responses in the office of the Consolidated Procurement Division located at 1 Franklin Street, Suite 345, Hampton, Virginia, 23669-3570 until 3:00 p.m. sharp local time on Tuesday, February 5, 2013 at which time they will be publicly opened and read aloud for the following:

**EXTERIOR WALL REPAIRS  
(FLEET MANAGEMENT & COMMUNITY SERVICES BUILDINGS)**

A MANDATORY PRE-BID CONFERENCE will be held on Thursday, January 24, 2013 at 10:00 a.m. local time at Fleet Management, 413 N. Armistead Avenue, Hampton, Virginia 23669.

FAX OR EMAIL responses shall not be accepted.

**Submittal requires 2 copies, original plus one copy of all documents to be returned with bid.**

Any previous submittals, offers, price given, either orally or written, can not be accepted as a response to this formal solicitation. To insure fair and equal consideration of your response, if you wish to compete, please reply to this request.

**NOTE:** All questions regarding this solicitation shall be in writing using the enclosed question form and must be in the Procurement Office by no later than 12:00 p.m. (Noon) on Monday, January 28, 2013. Copies of all questions and their answers will be distributed to those on the distribution list for this solicitation. Questions may be faxed to (757) 727-2207; however, it shall be the responsibility of the sender to verify receipt of all transmissions. The City of Hampton shall not be responsible for missed transmissions.

Final addendum and answers to pre-bid questions will be available from the Procurement Office on Tuesday, January 29, 2013 between 9:00 a.m. and 4:00 p.m. **Call prior to coming for availability. It shall be the responsibility of prospective bidders/offerors to verify, prior to turning in a response, if an addendum was issued. Bidders should check [www.hampton.gov/bids-contracts](http://www.hampton.gov/bids-contracts) for any addenda issued no later than 12 hours prior to bid receipt deadline.**

All forms relating to this solicitation are posted on [www.hampton.gov/bids-contracts](http://www.hampton.gov/bids-contracts) or may be obtained from the Procurement Office, 1 Franklin Street, Hampton, Virginia.

One set of all related solicitation forms may be picked up at the Procurement Office with no charge. Additional sets will be sold at \$ 10.00 per set. Requests for mailing of these forms shall be honored only upon receipt of a non-refundable payment of \$ 10.00 per set or an on call pick-up authorization and account number for a parcel delivery service. All checks shall be made payable to the **City of Hampton**.

However, all firms or persons obtaining solicitation packages are asked to comply with the following: All those submitting a response shall return all un-purchased solicitation packages with response. All non-responders shall return same within five (5) days of submittal date.

A bid bond or cashier's check, payable to the **City of Hampton** equal to five percent (5%) of the total price shall accompany any response that is \$100,000.00 or more.

A performance bond and payment bond, each equal to one hundred percent (100%) of the Contract price shall be required from the successful Contractor before any agreement is approved and issued if the Contract price is \$100,000.00 or more.

Public announcement of the decision to award this Contract shall be issued in written form distributed to all responsive participants via email or facsimile transmission, using the offeror's number or email address provided on the formal response form. Public records shall be available for inspection from the date of the public announcement.

To submit an offer on the project, contractors shall comply with the Code of Virginia Title 54. Provide your registration number in the designated location on the bid document **and provide a copy of Contractor's license with the bid response.**

It is the policy of the City of Hampton to facilitate the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in the cities procurement activities.

**PARTICIPATION GOALS:**  
**MINORITIES (MBE) 4.34%, NON-MINORITY WOMEN (WBE) 3.82%**

Toward that end the City of Hampton encourages these firms to compete and encourages non-minority firms to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, sub-contracts, and other contractual opportunities.

In accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193 it is the policy of the City of Hampton not to discriminate against faith-based organizations.

During the performance of this Contract, the Contractor agrees as follows: (i) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting for the provisions of this nondiscrimination clause. (ii) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such Contractor is an equal opportunity employer. (iii) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section. (iv) The Contractor will include the provisions of i, ii, and iii in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the forgoing clauses in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

During the performance of this Contract, the Contractor agrees to provide services to the City in accordance with the highest standards in the construction industry.

The City of Hampton cannot legally agree to any clause indemnifying the Contractor from any damages arising out of the Contract or holding the Contractor harmless. The submission of a bid or a proposal constitutes an agreement by the Contractor not to request such language in the resulting Contract.

By signing and submitting a bid or offer under this solicitation, the bidder or offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. Certification must be completed by the awarded contractor within ten (10) days from the date of award. If any subcontractors are involved, the subcontractor will have workers compensation insurance in accordance with 2.2-4332 and 65.2-800 et seq. of the Code of Virginia.

The bidder or offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverage's during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in The Commonwealth of Virginia by the Virginia State Corporation Commission.

## **INSURANCE COVERAGE AND LIMITS REQUIRED**

Contractor agrees to secure and maintain in full force and effect at all times during the term of this Contract, the following policies of insurance:

1. Workers' Compensation Insurance as required under Va. Code Title 65.2.
2. Comprehensive General Liability Insurance, including contractual liability and products and completed operations liability coverages, in an amount not less than one million dollars (\$1,000,000) combined single limits (CSL). Such insurance shall name the City of Hampton as an additional insured by policy endorsement.
3. Automobile Liability Insurance including coverage for non-owned and hired vehicles in an amount not less than one million dollars (\$1,000,000) combined single limits (CSL).
4. Umbrella/Excess Liability Insurance at limits not less than two million dollars (\$2,000,000).

Contractor shall submit to the City Contract Administrator certificates of insurance with applicable endorsements to the policy attached, prior to beginning Work under this Contract and no later than ten (10) days after award of the Contract.

All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to the City, and shall carry the provision that the insurance will not be cancelled or materially modified without thirty (30) days prior written notice to the City.

IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO IMMEDIATELY NOTIFY THE CITY SHOULD ANY POLICY BE CANCELLED. FAILURE TO NOTIFY THE CITY SHALL CONSTITUTE A MATERIAL BREACH OF THE CONTRACT.

The certificates of insurance shall list the City of Hampton, 22 Lincoln Street, Hampton, Virginia 23669, as the additional insured for the specified project as outlined in this ITB. The endorsement to the policy would be that which is attached to the Contractor's liability policy that acknowledges the City as an additional insured on all policies the City is made an additional insured. This shall be either a direct endorsement that actually names the City or a blanket endorsement within the insurance policy that states that under a contractual agreement the City will be named as an also insured on the required insurance policy.

Insurance shall be primary and the additional insured's primary coverage is non-contributory.

Insurance shall be maintained during the entire term of the Contract and any extensions and shall be of the following forms and limit:

FORMS	LIMIT
WORKERS' COMPENSATION	STATUTORY
AUTOMOBILE LIABILITY	\$1,000,000 COMBINED SINGLE LIMIT
COMMERCIAL GENERAL LIABILITY	\$1,000,000 COMBINED SINGLE LIMIT
INCLUDING CONTRACTUAL OPERATIONS COVERAGE	
UMBRELLA/EXCESS LIABILITY	\$2,000,000

The establishment of minimum limits of insurance by the City does not reduce or limit the liability or responsibilities of the contractor.

Should any of the above described policies be cancelled before the expiration date thereof, notice shall be delivered in accordance with the policy provisions. The City further requires thirty (30) days notice of cancellation must be noted in the policy or in additional insured and alternate employer endorsements. Failure to obtain such notice provisions will void any awards or contracts to the bidder.

The Contractor, prior to notice to proceed or commencement of Work, whichever occurs first, agrees to maintain Builder's Risk insurance providing coverage to protect the interests of the City, Contractor, Subcontractors, including property in transit, and property on or off premises, which shall become part of the building or project. Coverage shall be written on an all-risk, replacement cost, and completed value form basis in an amount at least equal to 100% of the projected completed value of the project as well subsequent modifications of that sum. The Contractor further agrees that any flat deductible(s) shall not exceed \$5,000, any wind percentage deductible (when applicable) shall not exceed five-percent (5%); and any flood sublimit shall not be less than 25% of the projected completed value of the project.

The Contractor agrees to endorse the policy with a manuscript endorsement eliminating the automatic termination of coverage in the event the project is occupied in whole or in part, or put to its intended use, or partially accepted by the City . The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the City 's interest in the building ceases, or the building is accepted or insured by the City.

The Contractor further agrees to endorse the City as additional insured, or loss payee, on the Builder's Risk.

Deductibles, coinsurance penalties, & self-insured retention the Contractor agrees to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, self-insured retention, or coverage exclusion or limitation.



**CITY OF HAMPTON, VIRGINIA and HAMPTON CITY PUBLIC SCHOOLS  
INSTRUCTIONS AND INFORMATION  
ON COMPLYING WITH CITY INSURANCE REQUIREMENTS**

This information is to assist the contractor to understand the insurance requirements of the City of Hampton (City) and Hampton City Public Schools (HCS). Contractors are encouraged to share this information with insurance agents and brokers.

**1. Agreement/Reference.** All evidence of insurance must identify the nature of your business with the CITY/HCS. Clearly show any assigned number of a bid, contract, lease, permit, etc. or give the project name and the job site or street address to ensure that your insurance is properly assigned to the correct project. It is important that you **provide the types of coverage and minimum dollar amounts specified in the RFP or ITB document. Failure to provide the requested amounts may lead to disqualification and increase processing time.**

**2. When to submit.** Normally no work may begin until the certificate of insurance (COI) with proper endorsement has been received. It is important that the certificate and endorsement be provided as early as practicable. For **As-needed Contracts**, insurance need not be submitted until a specific job has been awarded. **Design Professionals** coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.

**3. Acceptable Evidence and Approval.** Proof of insurance is normally provided on an industry form known as the ACORD Certificate of Insurance. Insurance industry certificates other than the ACORD may be accepted after review. In addition to the ACORD form, an Insured Endorsement naming the CITY or HCS as an additional insured that has been completed by your insurance company or its designee must be attached to the COI. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the CITY is an automatic or blanket additional insured and the substantiating endorsement must be attached. Attaching the section of the insurance policy covering contractual additional insureds may be used until the actual endorsement is received.

All evidence of insurance must be authorized for the insurance provider by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter.

Acceptable Alternatives to **ACORD Certificates and other Insurance Certificates:**

- **A copy of the full insurance policy.**
- **Binders and Cover Notes** are also acceptable as interim evidence for up to ninety (90) days from date of approval.
- **Self-Insured** contractors or vendors must submit for review to the Risk Manager documentation of its financial ability to self-insure for each coverage required. (See Para 6 below.)

Additional Insured Endorsements DO NOT apply to the following:

- Indication of compliance with statute, such as Workers' Compensation Law
- Professional Liability insurance

**4. Renewal.** Upon renewal of any insurance policy it is the responsibility of the contractor to provide the updated ACORD Certificate of Insurance or other acceptable documentation to the City or HCS. If your policy number changes you must also submit a new Additional Insured Endorsement with an Insurance Industry Certificate.

**5. Cancellation.** The contractor/vendor must inform the City/HCS 30 days before insurance is cancelled or not renewed. The requirement for the insurance company to inform the additional

insured (s) is not enforceable. Failure to inform must be considered a substantive violation of the contract and could result in the contract being cancelled.

**6. Alternative Programs/Self-Insurance.** Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval after the CITY Risk Manager has reviewed the relevant documents. Any contractor or vendor that wishes to satisfy insurance requirements as a self-insured party must receive permission from the Risk Manager by submitting a request to the Risk Management Department.

**7. General Liability.** General liability insurance covering your operations (and products, where applicable) is required whenever the CITY or HCS is at risk of:

- **Third-party claims** which may arise out of your work or your presence or special event on city premises.
- **Sexual misconduct claims coverage** is a required coverage when the work performed involves minors.
- **Fire legal liability insurance** is required for persons occupying a portion of CITY or HCS premises.

**8. Automobile Liability** insurance is required only when vehicles are used in performing the work of your Contract or when they are driven off-road on CITY or HCS premises; it is not required for simple commuting unless CITY or HCS is paying mileage. However, compliance with Virginia law requiring auto liability insurance is a contractual requirement.

**9. Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed or other professional. The length of the claims discovery period required will vary with the circumstances of the individual job.

**10. Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law the minimum coverages (or a copy of the state's Consent To Self Insure) must be provided if you have any employees at any time during the period of this contract. Contractors with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement that can be obtained from Risk Management.

**A Waiver of Subrogation** on the coverage is required only for jobs where your employees are working on CITY premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the CITY) any workers' compensation paid to an injured employee of the contractor.

**11. Property Insurance** is required for persons having exclusive use of premises or equipment owned or controlled by the CITY.

**12. Builder's Risk/Course of Construction** is insurance coverage that protects the owner's interests in the structure as well as materials, fixtures and/or equipment being used in the construction or renovation of a building or structure should those items sustain physical loss or damage from a covered cause. It is required during construction projects and must include building materials in transit and stored at or away from the project site. This would also include materials purchased by the City for installation or erection by the contractor.

**13. Surety or Bond** coverage may be required to guarantee performance of work and payment to vendors and suppliers. A Fidelity Bond may be required to handle CITY funds or securities, and under certain other conditions. Specialty coverages may be needed for certain operations as outlined in the RFP or ITB.

**Examination of Contract Documents and Project Site:**

It is the responsibility of each Bidder before submitting a Bid:

- a. To examine thoroughly the Bid Documents;
- b. To visit the site to become familiar with and satisfy the Bidder as to the general, local and site conditions that may affect cost, progress, performance, or furnishing of the Work;
- c. To study and carefully correlate the Bidder's knowledge and observations with the Bid Documents and such other related data, and,
- d. To promptly notify the City of all conflicts, errors, ambiguities, or discrepancies which the Bidder has discovered in or between the Bid Documents and such other related documents or field/site conditions.

**A withdrawal of bid due to error shall be in accordance with Section 2.2-4330 B (1) of the Code of Virginia.** The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after conclusion of the bid opening procedure and shall submit original work papers with such notice.

The Contractor's Questionnaire is included in the Bid Documents and shall be submitted upon request within 72 hours. This information will assist the City in investigations and determination of Contractor's qualifications to perform the Work.

**Bidder Qualification:**

To demonstrate their qualifications to perform the Work, each Bidder shall be prepared to submit further written satisfactory evidence that the Bidder has sufficient experience, necessary capital, materials, machinery and skilled workers to complete the Work. If financial statements are required they shall be of such date as the City shall determine and shall be prepared on forms acceptable to the City. The City may make any such investigations as deemed necessary to determine the ability of the Bidder to perform the Work. The City's decision or judgment on these matters shall be final, conclusive and binding.

**Subcontractor Qualification:**

The apparent low Bidder shall, within seven (7) consecutive calendar days after the day of the Bid opening, submit to the City a list of all Subcontractors who will be performing work on the Project. Such list shall be accompanied by an experience statement with pertinent information as to similar projects and other evidence of experience and qualifications of each such Subcontractor, person and organization. If the City, after due investigation, has reasonable objection to any proposed Subcontractor, other person and organization, the City may, before giving the Notice of Award, request the apparent low Bidder to submit an acceptable substitute without an increase in Bid price. If the apparent low Bidder declines to make any such substitution, the contract shall not be awarded to such Bidder. For any Subcontractors, other persons, or organization so listed and to whom City does not make written objection prior to giving the Notice of Award, it will be deemed the City has no objection.

**Debarment:**

By submitting their Bid, Bidders certify that they are not now debarred by the Federal Government or by the Commonwealth of Virginia or by any other state, or by any town, city, or county, from submitting Bids on contracts for construction covered by this solicitation, nor are they an agent of any person or entity that is now so debarred.

**Evaluation Criteria:**

Pursuant to Section 2.2-4301 of the Virginia Public Procurement Act, Evaluation of the bids will be based upon the requirements set forth in the Invitation to Bid No. 13-42/A.

**Basis for Award:**

Contract award will be made to the lowest responsive and responsible bidder.

The City of Hampton reserve(s) the right to negotiate with the lowest responsible bidder in the event that price exceeds available funds. Such negotiation shall be in compliance with Sec. 2-337(e) Code of Hampton, Virginia.

The City of Hampton reserve(s) the right to reject any and all responses, to make awards in whole or in part, and to waive any informalities in submittals.

**Contact with City Staff, Representatives, and/or Agents:**

Direct contact with City staff, representatives, and/or agents other than Consolidated Procurement Division staff on the subject of this ITB or any subject related to this ITB is expressly prohibited except with the prior knowledge and permission of the Purchasing Agent or designated representative.

**PROCUREMENT OFFICE  
Division of Finance  
Hampton, Virginia**

**The City of Hampton does not discriminate against faith-based organizations.**

**CONTRACT BETWEEN  
CITY OF HAMPTON, VA  
AND**

**THIS CONTRACT**, made in triplicate on this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the City of Hampton, Virginia, a municipal corporation of the Commonwealth of Virginia hereinafter referred to as the ("CITY"), and \_\_\_\_\_, a Virginia corporation having a place of business at \_\_\_\_\_ hereinafter called the ("CONTRACTOR").

It is mutually understood and agreed that this CONTRACT shall consist of the Contract, General Conditions, and all documents included in solicitation and all documents submitted in response which, in turn, are made, by inclusion or specific reference, part of the agreement between CITY and CONTRACTOR. This collection of documents shall constitute the whole and complete Agreement between the CITY and the CONTRACTOR as the scope of Work, terms and conditions, and costs.

**WITNESSETH**, that the CONTRACTOR and the CITY, for the considerations hereinafter named, agree as follows:

**SECTION 1. SCOPE OF THE WORK**

CONTRACTOR shall perform services as specified in ITB \_\_\_\_\_ a certain proposal of CONTRACTOR dated \_\_\_\_\_ 2012, which is attached hereto and made a part of this CONTRACT by reference, as if repeated verbatim herein. In the event that a conflict exist between the referenced proposal of CONTRACTOR dated \_\_\_\_\_ 2012, and the terms of this CONTRACT, the terms of this CONTRACT shall govern and supersede any such conflicting terms of the proposal. The CONTRACTOR further agrees he will furnish all labor, equipment and material necessary to perform all Work in accordance with the requirements and provisions of the CONTRACT as defined in the General Conditions.

Notwithstanding the foregoing language, it is understood and agreed between the PARTIES hereto that the CITY shall be bound and obligated hereunder only to the extent that the funds shall have been appropriated and budgeted for the purpose of this CONTRACT. In the event funds are not appropriated and budgeted in any fiscal year for payments due under this CONTRACT, the CITY shall immediately notify

CONTRACTOR of such occurrence and this CONTRACT shall terminate on the last day of the fiscal year for which (an) appropriation (s) (was) were received without penalty or expense to the CITY of any kind whatsoever.

## **SECTION 2. TIME OF COMPLETION**

**A.** The Work to be performed under this CONTRACT shall be commenced within ten **(10) calendar days** after receipt of Written Notice to Proceed. The Work shall be completed within **\*\*type out # of days ( ) calendar days** after receipt of Notice to Proceed.

**B.** Failure to complete the Work, within the number of calendar days stated in this Section, including extension(s) granted thereto, shall result in **LIQUIDATED DAMAGES as set forth below.**

**C.** The CITY AND CONTRACTOR hereinafter referred to as ("PARTIES") agree that time is of the essence and the CITY will be substantially damaged in amounts that will be difficult or impossible to determine if substantial completion of the Project is not achieved within **\*\*type out # of days ( ) calendar days**. Therefore the PARTIES have agreed on sums which the PARTIES agree are reasonable as liquidated damages for such occurrences. It is further understood and agreed that the payment of the liquidated damage is in lieu of actual damages for such occurrences. The CONTRACTOR hereby waives any defense as to the validity of any liquidated damages stated in this CONTRACT as it may appear on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages. The CONTRACTOR shall be liable for **(\$ ) \*amount written out \*\* and Zero Cents per day** for every calendar day after expiration of the Contract Time that the Project is not substantially completed.

## **SECTION 3. CONSIDERATION/PROVISION OF SSN OR FIN**

**A.** In consideration of the work to be performed by CONTRACTOR, as set forth under Section 1, entitled Scope of Work, the CITY agrees to pay CONTRACTOR the total sum of **(\$ ) type out amount (if no cents type Zero) Cents.**

**B.** To obtain payment for work performed under this CONTRACT, individual Contractors shall provide their Social Security Numbers and proprietorships, partnerships, and corporations shall provide their Federal Identification Number.

## **SECTION 4. CHANGE IN SCOPE OF WORK**

It is understood that during the course of construction, changes in Scope of the Work may be necessary as covered in the General Conditions.

**A.** Changes in the scope of the work which affect the Contract Price or Extra Work shall require a formal written change order before work proceeds. Changes affecting cost and/or extra work shall be performed at mutually agreed-upon unit prices, or on a lump sum basis. The CONTRACTOR shall be prepared to justify any price for Extra Work by providing detailed breakdown and supporting documents when requested by the CITY.

1. If sub-contractor does the actual Work, the mark-up shall be limited to a maximum of 15%. If the subcontractor does not enter into the Work he shall not be added into the cost. General Contractor mark-up shall be limited to a maximum of 10%.

2. If the General Contractor is solely responsible for the Work the maximum mark-up shall be limited to 10%.

**B.** Changes in scope of Work affecting contract cost or Extra Work shall be performed only after receipt of a formal written modification to the Contract. Any Work performed prior to receipt of such formal written modification shall be done at the CONTRACTOR'S risk.

**C.** The provisions of (a) (b) above shall not limit or restrict the CONTRACTOR'S responsibility or authority for Emergency Work, as defined in the General Conditions.

**D.** Should the number of units of completed Work of any individual items of the bid sheets vary by more than twenty-five (25) percent from the estimated number of units, either the CITY or the CONTRACTOR may request a revision of the unit price for the item so affected, and both parties agree that under such conditions an equitable revision of the price shall be made.

## **SECTION 5. SCHEDULE OF PAYMENT**

**A.** The following Schedule of Payment shall be followed:

Delete (a) if does not apply

(a) On contracts of less than \$10,000.00 or contracts where work is to be completed in less than 45 days, payment shall be made as a lump sum upon completion of all work and acceptance by the Owner. Such payment shall be subject to retainage as defined in General Conditions, ACCEPTANCE AND FINAL PAYMENT

1. After the first of each month CONTRACTOR may present to the CITY an invoice covering the total quantity of Work that has been completed from the start of the job up to and including the last day of the preceding month, and the value of the Work so completed as determined in accordance with the schedule of measurement and values established for the CONTRACT. The monthly invoice may also include any allowance for the cost of such materials and equipment required in the permanent work as have been delivered to the site but not as yet incorporated in the Work. However, any such allowance shall not be included on the monthly invoice unless the CONTRACTOR has received prior approval from the CITY.

Receiving payment from the CITY for material stored on site does not in any manner relieve CONTRACTOR of either his responsibility to properly protect the material or his sole liability to replace material damaged or stolen. Payment by the CITY shall not be evidence that the CITY either approves material as suitable for the work intended, or that the CITY accepts any liability for the safe storage and protection of the material or its replacement if damaged or stolen.

The CITY reserves the right to request additional documentation from CONTRACTOR to support any request for payment.

2. The CITY shall, after determining accuracy of monthly invoice, and after deducting previous payments made, pay to the CONTRACTOR ninety-five (95) percent of the amount of the approved invoice. The five (5) percent retained percentage shall be held by the CITY until the Work is complete.

3. The CITY shall make payment to the CONTRACTOR within forty-five (45) days from the date each invoice is received by the CITY or its agent responsible for approval of such invoices.

Within twenty (20) days after receipt of the invoice, the CITY shall notify the CONTRACTOR of any defect or impropriety which would prevent payment within the forty-five (45) day limit.

Failure by the CITY to pay within forty-five (45) days shall allow the CONTRACTOR to assess a finance charge not to exceed one percent (1%) per month.



## **SECTION 6. OBLIGATION TO SUBCONTRACTOR/INTEREST RATE**

A. Within seven (7) days after receipt of amounts paid to the CONTRACTOR by the CITY, the CONTRACTOR shall take one of two steps relating to work performed by the subcontractor.

1. Pay the subcontractor for the proportionate share of the total payment received from the CITY attributable to the work performed by the subcontractor under that contract; or
2. Notify the CITY and the subcontractor, in writing, of intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

Unless the CONTRACTOR has complied with 1 or 2 above, interest shall accrue to the subcontractor at the rate of one percent (1%) per month.

B. The CONTRACTOR'S obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the CITY. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

The CONTRACTOR shall require each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

C. Upon written request and authorization to do so, the CITY may consider making payments directly to subcontractors or suppliers and deduct the amount due the CONTRACTOR. Any amount so paid by the CITY shall be subject to the five percent (5%) retainage. Any such payment shall not relieve the CONTRACTOR of any obligations under this CONTRACT nor shall any such payment limit or reduce any recourse of action or rights of the CITY relative to this CONTRACT.

## **SECTION 7. COMPLIANCE WITH ALL LAWS/FOREIGN AND DOMESTIC BUSINESSES-AUTHORITY TO TRANSACT BUSINESS IN THE COMMONWEALTH/COMPLIANCE WITH FEDERAL IMMIGRATION LAW**

A. Compliance With All Laws:

CONTRACTOR shall comply with all federal, state and local statutes, ordinances, and regulations now in effect or hereafter adopted, in the performance

of scope work set forth herein. CONTRACTOR represents that it possesses all necessary licenses and permits required to conduct its business and will acquire any additional licenses and permits necessary for performance of this CONTRACT, for example, demolition, land disturbance, and/or right-of-way permits, prior to the initiation of work.

**B. Foreign and Domestic Businesses-Authority to Transact Business in the Commonwealth**

CONTRACTOR whether organized as a stock or non stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity and shall provide proof thereof. CONTRACTOR shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth to be revoked or cancelled at any time during the term of the CONTRACT. Failure by the CONTRACTOR to remain in compliance with the provisions of this section shall be deemed a material breach of this CONTRACT.

**C.** CONTRACTOR does not and shall not during the performance of the CONTRACT knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

**SECTION 8. APPLICABLE LAW/VENUE**

This CONTRACT shall be deemed to be a Virginia CONTRACT and shall be governed as to all matters whether of validity, interpretations, obligations, performance or otherwise exclusively by the laws of the Commonwealth of Virginia, and all questions arising with respect thereto shall be determined in accordance with such laws. Regardless of where actually delivered and accepted, this CONTRACT shall be deemed to have been delivered and accepted by the parties in the Commonwealth of Virginia.

**VENUE**

Any and all suits for any claims or for any and every breach or dispute arising out of this CONTRACT shall be maintained in the appropriate court of competent jurisdiction in the City of Hampton, Virginia.

**SECTION 9. NONDISCRIMINATION**

**A.** Employment discrimination by Contractor shall be prohibited. During the performance of this Agreement, Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of Contractor, will state that Contractor is an equal opportunity employer.

3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

**B.** The Contractor will include the provisions of the foregoing paragraphs 1,2 and 3 in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

## **SECTION 10. DRUG-FREE WORKPLACE PROVISIONS**

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of who are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

## **SECTION 11. NON-ASSIGNMENT CLAUSE**

CONTRACTOR shall not assign its rights and duties under this Agreement without the prior written consent of the CITY.

## **SECTION 12. ENVIRONMENTAL CONSIDERATION**

Any costs or expenses associated with environmentally related violations of the law, the creation or maintenance of a nuisance, or releases of hazardous substances, including, but not limited to, the costs of any cleanup activities, removals, remediations, responses, damages, fines, administrative or civil penalties or charges imposed on the CONTRACTOR, whether because of actions or suits by any governmental or regulatory agency or by any private party, as a result of the storage, accumulation, or release of any hazardous substances, or any noncompliance with or failure to meet any federal, state or local standards, requirements, laws, statutes, regulations or the law of nuisance by CONTRACTOR (or by its agents, officers, employees, subcontractors, consultants, subconsultants, or any other persons, corporations or legal entities employed, utilized, or retained by Contractor) in the performance of this CONTRACT or related activities, shall be paid by CONTRACTOR. This paragraph shall survive the termination, cancellation or expiration of this CONTRACT.

## **SECTION 13. FAITH BASE NON-DISCRIMINATION**

**THE CONTRACT ACKNOWLEDGES THAT THE CITY OF HAMPTON DOES NOT DISCRIMINATE AGAINST FAITH BASED ORGANIZATIONS AS THAT TERM IS DEFINED IN VIRGINIA CODE SECTION 2.2-4343.1.**

## **SECTION 14. FORMAL CORRESPONDENCE**

### **REPRESENTATIVES AND NOTICES**

Any notice, demand, or request by or made pursuant to this AGREEMENT shall be deemed properly made if personally delivered in writing or sent by the parties in the United States mail, postage paid, to the representative specified below or as otherwise designated in writing and mutually agreed.

The CITY's representation shall be (name and title of representative goes here):

All formal correspondence from CONTRACTOR to CITY shall be addressed to:

Micah Garner  
Facilities Maintenance & Operations Manager  
231 Springfield Avenue  
Hampton, VA 23669

The CONTRACTOR'S representation shall be (name and title of representative goes here): All formal correspondence from CITY to CONTRACTOR shall be addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to: Octavia Andrew  
Senior Buyer  
City of Hampton  
1 Franklin Street, Suite 345  
Hampton, Virginia 23669

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the CONTRACTOR and the CITY.

## **SECTION 15. DEFINITIONS**

- A.** The City and the Contractor are those named as such in the contract. They are treated throughout the contract as if each were of the singular number and masculine gender.
- B.** The City Representative shall be that individual named by the CITY to administer day-to-day activities, and charged with the responsibility to insure compliance with the scope of Work, terms and conditions, and cost in accordance with CONTRACT.
- C.** The term "Subcontractor" shall mean anyone, other than the CONTRACTOR, who furnishes at the site, under an Agreement with the Contractor, labor, or labor and materials, or labor and equipment.
- D.** Work shall mean the furnishing of all labor, materials, equipment, and other incidentals necessary to the successful completion of the Contract and the carrying out of all duties and obligations imposed by the Contract.
- E.** Extra Work shall mean such additional labor, materials, equipment, and other incidentals, not shown on the Drawings or called for in the Specifications, but authorized by the City in writing as an addition to that Work called for in the Drawings and Specifications.
- F.** The Written Notice to Proceed is a separate document issued by the City Representative after all other Contract documents have been issued and all pre-

construction matters have been agreed upon between the City Representative and the Contractor. The notice to proceed requires the Contractor to begin Work on the site within ten (10) calendar days of the date of its issuance.

## **SECTION 16. Entire Agreement and Modifications**

- A.** The Contract shall be signed in triplicate by the City and the Contractor.
- B.** The Contract Documents shall be the whole and entire Agreement between the City and the Contractor, and cannot be modified, altered or amended, except in writing and signed by all parties. No agreements, verbal or written, shall be interpreted as a change or modification to this Contract unless issued as prescribed in Sections 16 (C) and (D).
- C.** Formal, written modifications shall be the only method used to change the Contract between the City and the Contractor. Any change otherwise issued and accepted by the Contractor is so accepted by the Contractor at his own risk. Any extra Work performed by the Contractor subsequent to such acceptance is also at the Contractor's own risk.
- D.** Formal written communications proposing to change scope of Work, terms and conditions, cost of Contract, shall be addressed as specified in Contract.
- E.** The Contract Documents are complementary and what is called for by one shall be as binding as if called for by all.
- F.** Severability: If any provision of this contract is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this contract, and all other provisions of this contract shall remain in force and effect.

## **SECTION 17. Correlation Of Documents**

The CITY will furnish to the CONTRACTOR, free of charge, copies of Drawings and/or Specifications reasonably necessary for the execution of the Work.

The CITY will be responsible for the adequacy of design and sufficiency of the Drawings and/or Specifications, issuing, if necessary, addendum to clarify the Work. However, when the Work involved is that common to a trade or industry, which can be judged as acceptable, or not by commonly accepted standards for a specific trade, the CONTRACTOR shall not use the inadequacy or omission of drawing detail or specification language to excuse his failure to perform to the highest industry standards. All Drawings and/or Specifications shall remain the property of the CITY, and shall not be reused on other Work by the CONTRACTOR.

## **SECTION 18. Access To Work Site**

The CITY shall provide access to the site upon which the Work under this CONTRACT is to be done, and to such other areas which are designated for use by the CONTRACTOR.

The CONTRACTOR shall provide at his own expense and without liability to the CITY any additional land and access thereto that may be required for temporary facilities, or for storage of materials.

## **SECTION 19. Work Site Conditions/Discrepancies**

The CONTRACTOR, by careful examination, shall satisfy himself as to the nature and location of the Work, the character of equipment and facilities needed preliminary to and during the prosecution of the Work, the general and local conditions, and all other matters which can in any way affect the Work under this CONTRACT.

If the CONTRACTOR, finds any discrepancy between the Drawings and/or Specifications and the physical conditions of the Work site, or any errors or omissions in Drawings and/or Specifications, he shall immediately inform the City Representative in writing, and the City Representative shall promptly verify the same. Any Work done after such discovery, until authorized, will be done at the CONTRACTOR'S risk, except in the event of an emergency.

## **SECTION 20. CHANGED CONDITIONS**

During the course of the Work, the CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of any emergency, notify the City Representative in writing of previously unknown conditions at the Work site, differing materially from those ordinarily encountered and which prevent the proper execution of the Work of the character provided for in this CONTRACT. The City Representative shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or the time required for, performance of this CONTRACT, an equitable adjustment shall be made and the CONTRACT formally modified accordingly. Any claim of the CONTRACTOR for adjustment hereunder shall not be allowed unless he has given notice as required above and the CONTRACT has been formally modified.

## **SECTION 21. MATERIAL AND APPLIANCES**

Unless otherwise stipulated, the CONTRACTOR shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities of a quantity and quality necessary for the execution and completion of the Work. The CONTRACTOR shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

The CONTRACTOR shall promptly notify in writing the City Representative if any change in materials as specified is contemplated or proposed. Any such proposed change shall be promptly investigated, and if found to be necessary and/or acceptable, the CONTRACT shall be formally

modified. Any change in materials shall be made at the CONTRACTORS own risk unless approved as prescribed above.

## **SECTION 22. PERMITS, UTILITY FEES, BUSINESS LICENSE**

Utility fees of a temporary nature necessary for the prosecution of the Work shall be secured and paid for by the CONTRACTOR. Utility fees for permanent structures or permanent changes in existing facilities shall be secured and paid for by the CITY, unless otherwise specified.

Permits (building, plumbing, mechanical, and electrical) shall be obtained from the Department of Building Inspection prior to performance of Work. No permit fee will be charged for CITY owned property. However, fees will be charged for all other publicly owned property.

CONTRACTOR shall comply with business license requirements on all publicly owned projects.

## **SECTION 23. ROYALTIES AND PATENTS**

The CONTRACTOR shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and save harmless the CITY from loss on account thereof except that the CITY shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified, unless the CITY has notified the CONTRACTOR prior to the signing of the CONTRACT that the particular process, design, or product is patented or is believed to be patented.

## **SECTION 24. SUPERINTENDENCE**

The CONTRACTOR shall keep assigned to the Project at all times during its progress, a representative who shall represent the CONTRACTOR and have authority to make decisions in day-to-day activities.

## **SECTION 25. EMPLOYEES**

The CONTRACTOR shall at all times enforce proper discipline and order among his employees, and shall seek to avoid employing on the Work any unfit person or anyone not skilled in the Work assigned to him. Adequate sanitary facilities shall be provided by the CONTRACTOR. The CONTRACTOR shall be responsible for complying with all OSHA requirements.

## **SECTION 26. APPLICABLE FEDERAL, STATE, LOCAL RESPONSIBILITIES**

The CONTRACTOR shall keep himself fully informed of all applicable federal, state, and local ordinances, regulations, and laws. He shall at all times observe and comply with said ordinances, regulations, and laws. He shall post all notices to the public and employees as required.



## **SECTION 27. PROTECTION OF THE PUBLIC AND OF WORK AND PROPERTY/ EMERGENCY WORK**

The CONTRACTOR shall provide and maintain all necessary watchmen, flagmen, barricades, and signage in accordance with requirements of the City Representative and take all reasonable precautions for the protection and safety of the public. He shall continuously maintain reasonable protection of all Work from damage, and shall take all reasonable precautions to protect property from injury or loss arising in connection with this CONTRACT. The CONTRACTOR shall take reasonable precautions to protect private property adjacent to the project from such nuisances as debris and excessive noise. He shall make good any damage, injury or loss to his Work and to the Property Owner resulting from lack of reasonable protective precautions, except such as may be caused by agents or employees of the CITY.

### **EMERGENCY WORK**

In a situation which affects the safety of life, or of the Work, or of adjoining property, the CONTRACTOR is, without special instructions or authorization from the City Representative, permitted to act at his discretion to prevent such threatening loss or injury. He shall also act, without appeal, if so authorized or instructed by the City Representative. Any compensation claimed by the CONTRACTOR on account of emergency Work, shall be negotiated and approved by the CITY, in writing.

## **SECTION 28. SUBCONTRACTS**

The CONTRACTOR shall, as soon as practicable after signing the CONTRACT, but in any event prior to the performance of any Work on the project, notify the CITY in writing of the names of subcontractors proposed for the Work, designating the portions of Work to be performed by each. This list shall include the estimated dollar amount with each and identify those firms who are defined as a Minority Business Enterprise, Small Business Enterprise, Woman Owned Enterprise.

A Minority Business Enterprise (MBE) is a business that is owned and controlled by one or more socially and economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background, or other similar cause. A MBE is at least 51% owned and controlled by one or more such disadvantaged persons. In the case of publicly-owned companies, at least 51% of its voting stock must be owned and controlled by minorities or members of other groups. Additionally, the management and daily business operations must be controlled by one or more such individuals.

MINORITY means any African American, Hispanic American, Native American or Alaskan and/or Aleut native, Asian or a person of Pacific Island descent who is either a citizen of the United States or a permanent resident. Member of other groups means all other individuals found to be socially disadvantaged by the United States Small Business Administration under Section 8(a) of the Small Business Act 15usc 637 (a).

The CONTRACTOR agrees that he is as fully responsible for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the Contract Documents shall create any Contractual relation between any subcontractor and the CITY.

## **SECTION 29. ORDER OF COMPLETION**

The CONTRACTOR shall submit, as soon as practical after award of CONTRACT, a schedule which shall show the order (and value of) in which the CONTRACTOR proposes to carry on the Work, with dates at which the CONTRACTOR will start the several parts of the Work, and estimated dates of completion of the several parts. The schedule of values, once approved by CITY, shall be the basis for submittal and approval of monthly progress payments.

## **SECTION 30. SEPARATE CONTRACTS**

The CITY reserves the right to let other CONTRACTORS provide goods or perform services in connection with the Project. The CONTRACTOR shall afford other contractors reasonable opportunity for the introduction and storage of materials and the execution of Work, and shall properly connect and coordinate his Work with theirs. If the proper execution or results of any part of the CONTRACTOR'S Work depends upon the Work of any other contractors, the CONTRACTOR shall inspect and promptly report to the City Representative any defects in such Work that render it unsuitable for such proper execution and results.

## **SECTION 31. CITY REPRESENTATIVE'S STATUS**

The City Representative shall at all times have access to the Work whenever it is in preparation or progress, and the CONTRACTOR shall provide proper facilities for such access and for inspection.

The City Representative shall perform technical inspection of the Work. He has authority to stop the Work whenever such stoppage may be necessary to insure the proper execution of the CONTRACT. He shall also have authority to reject all Work and materials which do not conform to the CONTRACT and to decide questions which arise in the execution of the Work.

Notwithstanding such inspection, the CONTRACTOR will be held responsible for the acceptability of the finished Work. If the specifications, the City Representative's instructions, laws, ordinances, or any public authority require any Work to be specially tested or approved, the CONTRACTOR shall give the CITY timely notice to its readiness for inspection, and if the inspection is by an authority other than the CITY, of the date fixed for such inspection. If any Work required to be inspected should be covered without proper approval or consent it must, if required, be uncovered for examination and properly restored at the CONTRACTOR'S expense.

Reexamination of any Work may be ordered, and if so ordered, the Work must be uncovered by the CONTRACTOR. If such Work is found to be in accordance with the CONTRACT, the

CITY shall pay the cost of reexamination and replacement. If such Work is not in accordance with the CONTRACT, the CONTRACTOR shall pay such cost.

The City Representative's presence and actions do not replace the legal requirements of the State and/or local building codes. Notwithstanding the City Representative's actions or instructions, the CONTRACTOR shall adhere to all building code requirements regarding inspection and approvals.

Whenever work being done by the CITY'S forces, utility companies, or by other contractors' forces is contiguous to Work covered by this CONTRACT, the respective rights of the various interests involved shall be established by the City Representative to secure the completion of the various portions of the Work in general harmony.

The City Representative shall, within a reasonable time after presentation to him, make decisions in writing on all matters relating to the execution and progress of the Work or the interpretation of the specifications and/or drawings.

In making these decisions, the City Representative, shall have authority to make interpretations and minor changes as to the scope of Work not involving extra cost, and not inconsistent with the purpose of the Work. If the CONTRACTOR claims that any such instructions involve extra cost, he shall give written notice thereof within ten **(10)** days, after the receipt of such instruction. Except in an emergency endangering life and/or property, no extra cost shall be accepted by the CITY unless pursuant to a formal modification to the CONTRACT.

## **SECTION 32. RESPONSIBILITY FOR WORK**

The CONTRACTOR assumes full responsibility for the Work until final acceptance. The CONTRACTOR shall be responsible for damage to or destruction of the Work caused by the negligence of the CONTRACTOR, or any other party under the control and supervision of the CONTRACTOR. He agrees to make no claims against the CITY for damages for the Work from any cause except negligence or willful acts of the CITY, improper or faulty design, acts of any Enemy, or acts of war. CONTRACTOR shall obtain and maintain in force until CITY'S final acceptance of Project, Builders' Risk Insurance that fully covers any loss or damage to Project.

## **SECTION 33. CHANGES IN THE WORK**

The CITY may make changes in the drawings and specifications or scheduling of the CONTRACT within the general scope at any time. If such changes add to or deduct from the CONTRACTOR'S cost of the Work, the CONTRACT price shall be adjusted accordingly. All such Work shall be executed under the conditions of the original CONTRACT except that any claim for extension of time caused thereby shall be included as part of the negotiated change order.

## **SECTION 34. EXTENSION OF TIME**

A. Extension of time stipulated in the CONTRACT for completion of the Work will be made when formally approved changes in the Work increase the overall scope; when the Work is suspended; or when the Work of the CONTRACTOR is delayed on account of physical conditions or acts of others which could not have been foreseen by, or which were beyond the control of the CONTRACTOR, his subcontractors or suppliers, and which were not the result of their fault or negligence.

**B. NO TIME EXTENSION WILL BE GRANTED BY THE CITY UNLESS THE FOLLOWING PROCESS IS FOLLOWED.** If, during any month the CONTRACTOR is unable to Work for reasons beyond his control and believes he is due an extension, he shall submit in writing, along with his monthly request for progress payments, a request for the extension which clearly explains the circumstances which he feels justifies an extension. The request will be reviewed by the CITY and a written response, granted or rejecting the request, will be issued. Any request for days older than the current month will be dismissed without consideration. Time extensions shall constitute a formal change to the CONTRACT terms and conditions and shall be issued accordingly.

## **SECTION 35. SUSPENSION OF WORK**

The CITY may at any time suspend the Work, or any part thereof, by giving ten (10) days' notice to the CONTRACTOR in writing. The Work shall be resumed by the CONTRACTOR within ten (10) days after the date fixed in the written notice from the City to the Contractor to do so. The CITY shall reimburse the CONTRACTOR for expenses incurred as a result of such suspension.

## **SECTION 36. TERMINATION**

### **A. Contractor's Right to Stop Work or Terminate Contract**

If the Work should be suspended by CITY, stopped under an order of any court or other public authority, or delayed by City Representative's failure to respond for a period of more than three (3) months, through no act or fault of the CONTRACTOR or of anyone employed by him, the CONTRACTOR may, upon having given ten (10) days written notice, and having received no reply, terminate CONTRACT. The CONTRACTOR shall be paid for all Work properly executed, plus any loss sustained upon any plant or materials plus reasonable profit and damages.

### **B. Non-Appropriation –Availability of Funds**

It is understood and agreed between the PARTIES hereto that the CITY shall be bound and obligated hereunder only to the extent that the funds shall have been appropriated and budgeted for the purpose of this CONTRACT. In the event funds are not appropriated

and budgeted in any fiscal year for payments due under this CONTRACT, the CITY shall immediately notify CONTRACTOR of such occurrence and this CONTRACT shall terminate on the last day of the fiscal year for which an appropriation (s) (was) were received without penalty or expense to the City of any kind whatsoever.

**C. Termination for Convenience**

The CITY may at any time, and for any reason terminate this contract by written notice to the CONTRACTOR specifying the termination date, which shall be not less than thirty (30) days from the date such notice is mailed. Notice shall be given to CONTRACTOR by certified mail/return receipt requested at the address set forth in CONTRACTOR'S Bid Proposal.

In the event of such termination, CONTRACTOR shall be paid such amount as shall compensate CONTRACTOR for the work satisfactorily completed, and accepted by the CITY, at the time of termination. If the CITY terminates this CONTRACT, CONTRACTOR shall withdraw its personnel and equipment, cease performance of any further work under this CONTRACT, and turn over to the CITY any work completed or in process for which payment has been made.

**D. Termination with Cause/Default – Cancellation**

In the event the CONTRACTOR shall for any reason or through any cause be in default of the terms of this CONTRACT, the CITY may give CONTRACTOR written notice of such default by certified mail/return receipt requested at the address set forth in CONTRACTOR'S Bid Proposal.

Unless otherwise provided, the CONTRACTOR shall have ten (10) days from the date such notice is mailed in which to cure the default. Upon failure of the CONTRACTOR to cure the default, the CITY may immediately cancel and terminate this CONTRACT as of the mailing date of the default notice.

Upon termination, the CONTRACTOR shall withdraw its personnel and equipment, cease performance of any further work under the CONTRACT and turn over to the CITY any work in process for which payment has been made.

In the event of violations of law, safety or health standards and regulations, this CONTRACT may be immediately cancelled and terminated by the CITY and provisions herein with respect to opportunity to cure default shall not be applicable.

**SECTION 37. REMOVAL OF EQUIPMENT**

In the case of termination of this CONTRACT before completion for any cause whatever, the CONTRACTOR, if notified to do so by the CITY, shall promptly remove any part or all of his

equipment and supplies from the property, failing which the CITY shall have the right to remove such equipment and supplies at the expense of the CONTRACTOR.

### **SECTION 38. PARTIAL COMPLETION AND ACCEPTANCE**

If at any time prior to final completion, any portion of the Work has been satisfactorily completed, and if the City Representative determines that access to that portion is not required for the future operation of the CONTRACTOR, the CITY may issue to the CONTRACTOR a certificate of partial completion, and thereupon or at any time thereafter the CITY may take over and use the portion of the Work described in such certificate.

The issuance of a certificate of partial completion shall not be construed to constitute an extension of the CONTRACTOR'S time to complete the portion of the Work to which it relates if he has failed to complete it in accordance with the terms of this CONTRACT. The issuance of such a certificate shall not operate to release the CONTRACTOR or his sureties from any obligations under this CONTRACT or performance bond.

If such prior use increases the cost of or delays the Work, the CONTRACTOR shall be entitled to extra compensation, or extension of time, or both, as the CITY may determine, unless otherwise provided.

### **SECTION 39. PAYMENTS WITHHELD PRIOR TO FINAL ACCEPTANCE OF WORK**

As a result of discovered evidence, the CITY may withhold or nullify the whole or part of any certificate of payment to such extent as may be necessary to protect himself from loss caused by:

- A. Defective Work not remedied.
- B. Claims filed or reasonable evidence indicating probable filing of claims by other parties against the CONTRACTOR.
- C. Failure of the CONTRACTOR of making payments properly to subcontractors or for material or labor.
- D. Damage to another CONTRACTOR.

### **SECTION 40. CORRECTION OF WORK BEFORE FINAL PAYMENT**

The CONTRACTOR shall promptly remove from the premises all materials and work condemned by the City's Representative as failing to meet CONTRACT requirements, whether incorporated in the Work or not, and the CONTRACTOR shall promptly replace materials and/or re-execute Work in accordance with the CONTRACT and without expense to the CITY

and shall bear the expense of making good all Work of other CONTRACTORS destroyed or damaged by such removal or replacement.

All removal and replacement Work shall be done at the CONTRACTOR'S expense. If the CONTRACTOR does not take action to remove such condemned Work and materials within ten (10) days after written notice, the CITY may remove them and store the material at the expense of the CONTRACTOR. If the CONTRACTOR does not pay the expense of such removal and storage within ten (10) days' time thereafter, the CITY may, upon ten (10) days written notice, sell such materials at auction or at private sale and shall pay to the CONTRACTOR any net proceeds thereof, after deducting all the costs and expenses that should have been borne by the CONTRACTOR.

#### **SECTION 41. CLEANING UP**

The CONTRACTOR shall remove at his own expense from the Work site and from all public and private property all temporary storage structures, rubbish, and waste materials resulting from his operations. This requirement shall not apply to property used for permanent disposal of rubbish or waste materials in accordance with permission for such disposal granted to the CONTRACTOR by the City Representative where such disposal is in accordance with local ordinances.

#### **SECTION 42. ACCEPTANCE AND FINAL PAYMENT**

A. Upon receipt of written notice that the Work is substantially completed or ready for final inspection and acceptance, the City Representative will promptly make such inspection, and when he finds the Work acceptable under the CONTRACT and the CONTRACT fully performed or substantially completed he shall promptly issue a certificate, over his own signature, stating that the Work required by this CONTRACT has been completed or substantially completed and is accepted by him under the terms and conditions thereof, and the entire balance found to be due the CONTRACTOR, including the retained percentage, less a retention based on the estimate of the fair value of the claims against the CONTRACTOR and the cost of completing the incomplete or unsatisfactory items of Work with specified amounts for each incomplete or defective item or Work, is due and payable. The date of substantial completion of a project or specified area of a project is the date when the construction is sufficiently completed in accordance with the CONTRACT as modified by any change orders agreed to by the parties so that the CITY can occupy the Project or specified area of the Project for the use for which it is intended.

B. The making and acceptance of the final payment shall constitute a waiver of all claims by the CITY, other than those arising from unsettled claims or from faulty Work appearing within the guarantee period provided in the Special Conditions, from the requirements of the Drawings and Specifications, or from manufacturer's guarantees. It shall also constitute a waiver of all claims by the CONTRACTOR, except those previously made and still unsettled.

### **SECTION 43. HOLD HARMLESS-INDEMNIFICATION**

It is understood and agreed that CONTRACTOR hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of CONTRACTOR, its subcontractors, agents or employees under or in connection with this CONTRACT or the performance or failure to perform any Work required by this CONTRACT. CONTRACTOR agrees to indemnify and hold harmless the City and its agents, volunteers, servants, employees and officials from and against any and all claims, losses, or expenses, including reasonable attorney's fees and litigation expenses suffered by any indemnified party or entity as the result of claims or suits due to, arising out of or in connection with (a) any and all such damages, real or alleged, (b) the violation of any law applicable to this CONTRACT, and (c) the performance of the Work by CONTRACTOR or those for whom CONTRACTOR is legally liable. Upon written demand by the City, CONTRACTOR shall assume and defend at CONTRACTOR'S sole expense any and all such suits or defense of claims made against the City, its agents, volunteers, servants, employees or officials.

### **SECTION 44. INSURANCE**

CONTRACTOR agrees to secure and maintain in full force and effect at all times during the term of this CONTRACT, the following policies of insurance:

- A.** Workers' Compensation Insurance as required under Va. Code Title 65.2.
- B.** Comprehensive General Liability Insurance, including contractual liability and products and completed operations liability coverages, in an amount not less than one million dollars (\$1,000,000) combined single limits (CSL). Such insurance shall name the of Hampton as an additional insured by policy endorsement.
- C.** Automobile Liability Insurance including coverage for non-owned and hired vehicles in an amount not less than one million dollars (\$1,000,000) combined single limits (CSL).
- D.** Umbrella/Excess Liability Insurance at limits not less than two million dollars (\$2,000,000).

CONTRACTOR shall submit to the contract administrator certificates of insurance with endorsement to the policy attached, prior to beginning Work under this CONTRACT and no later than ten (10) days after award of the CONTRACT.

All policies of insurance required herein shall be written by insurance companies licensed to conduct the business of insurance in Virginia, and acceptable to the CITY, and shall carry the provision that the insurance will not be cancelled or materially modified by CONTRACTOR without thirty (30) days prior written notice to the CITY .

Insurance shall be primary and the additional insured's primary coverage is non-contributory.



IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO IMMEDIATELY NOTIFY THE CITY SHOULD ANY POLICY BE CANCELLED. FAILURE TO NOTIFY THE CITY SHALL CONSTITUTE A MATERIAL BREACH OF THE CONTRACT.

The certificates of insurance shall list the City of Hampton, 1 Franklin Street, Hampton, Virginia 23669, as the additional insured for the specified project. The endorsement to the policy would be that which is attached to the Contractor's liability policy that acknowledges the City as an also insured on all policies the City requires to be endorsed. This shall be either a direct endorsement that actually names the City or a blanket endorsement that the Contract states that the City will be named as an also insured on the insurance policy.

Builder's Risk:

The Contractor, prior to notice to proceed or commencement of Work, whichever occurs first, agrees to maintain Builder's Risk insurance providing coverage to protect the interests of the **City of Hampton**, Contractor, Subcontractors, including property in transit, and property on or off premises, which shall become part of the building or project. Coverage shall be written on an all-risk, replacement cost, and completed value form basis in an amount at least equal to 100% of the projected completed value of the project as well subsequent modifications of that sum. The Contractor further agrees that any flat deductible(s) shall not exceed \$5,000, any wind percentage deductible (when applicable) shall not exceed five-percent (5%); and any flood sublimit shall not be less than 25% of the projected completed value of the project. The Contractor agrees to endorse the policy with a manuscript endorsement eliminating the automatic termination of coverage in the event the project is occupied in whole or in part, or put to its intended use, or partially accepted by the **City of Hampton**. The manuscript endorsement shall amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, the School Board of the City of Hampton's interest in the building ceases, or the building is accepted or insured by the City. The Contractor further agrees to endorse the **City of Hampton** as additional insured, or loss payee, on the Builder's Risk. Deductibles, coinsurance penalties, & self-insured retention the Contractor agrees to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, self-insured retention, or coverage exclusion or limitation.

#### **SECTION 45. PAYMENT/PERFORMANCE BONDS**

Unless otherwise noted, all surety documents required herein shall be received and approved by the Contract Administrator prior to beginning Work under the CONTRACT and not later than ten (10) days after issuance of the "Notice of Intent to Award" or Notice of Award" (whichever is sooner) for this ITB. Each of the required bonds shall be payable to the City of Hampton. Bonds shall be executed by one or more surety companies legally authorized to issue bonds and do business in the Commonwealth of Virginia. Said bonds shall be payable to the City of Hampton, 1 Franklin Street, Hampton, Virginia 23669. With the exception of any required Bid Bond, each of the required bonds shall be maintained through the term of the Contract and any extensions.

CONTRACTOR shall furnish to the CITY a payment bond and a performance bond in conformity with the Virginia Code §2.2-4337 et seq. Each payable to the City of Hampton and each in the sum of the City contract amount. The performance bond shall be conditioned upon the faithful performance of the CONTRACT in strict conformity with the terms and conditions of the CONTRACT, and each payment bond shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the Work.

#### **SECTION 46. CLAIMS FOR EXTRA COMPENSATION**

If CONTRACTOR encounters work and services not included in this CONTRACT or any supplement thereto but which in the opinion of CONTRACTOR is necessary for the successful completion of the CONTRACT and requires extra compensation, CONTRACTOR shall, before it begins the work on which it bases its claim, promptly notify the in writing of its intention to perform the work and to make claim for extra compensation. Notification by CONTRACTOR under the terms of this section shall not be construed as proving the validity of the claim. **No claim for extra compensation will be filed or considered unless notification is given as herein set forth.**

Upon notification, the CITY shall promptly review any claim for extra compensation. If a claim is accepted by the CITY it shall be paid as extra work in accordance with the terms of a supplemental agreement executed by the PARTIES before such work is begun.

The amounts claimed as extra compensation by CONTRACTOR shall be separately itemized, become a part of the claim, and serve as documentation thereto. The amounts itemized shall be in sufficient detail to enable the CITY to analyze the need for the extra work and the costs claimed for the work.

#### **SECTION 47. SUBMISSION AND DISPOSITION OF CONTRACTUAL CLAIMS**

Prompt knowledge by the CITY of an existing or impending claim for damages or other relief may alter the plans, scheduling, or other action of CITY and/or result in mitigation or elimination of the effects of the claim.

Therefore, a written statement providing CITY with notice of CONTRACTOR'S intention to file a claim which (i) describes the act or omission by CITY or its agents that CONTRACTOR contends caused it damages or entitles it to other relief; and (ii) provides a description of the nature and amount of the claim. Such written statement shall be submitted to CITY within twenty (20) days of the time of the occurrence or beginning of the work upon which the claim is based; provided, however, if such damage is deemed certain in the opinion of CONTRACTOR to result from its acting on an order from CITY, it shall immediately take written exception to the order. For purposes of this provision, "claim" shall include, without limitation, any request for an increase in the contract price or time and any request for equitable adjustment. Submission of a notice

of claim as specified shall be mandatory, and failure to submit such notice shall be a conclusive waiver to such claim for damages or other relief by CONTRACTOR. Neither an oral notice or statement, nor an untimely notice of statement will be sufficient to satisfy the requirements herein.

CITY will review the claim and render a final decision in writing thirty (30) days of receipt of CONTRACTOR'S written request for a final decision. Such decision shall be final and binding to the fullest extent allowed by law.

#### **SECTION 48 - FEDERAL FUNDING/REGULATIONS (24 CFR 85.36(i)).**

The following provisions shall specifically apply to all contracts and subcontracts resulting from an award based on the use of Federal Funds.

1. Remedies for breach of contract shall be in accordance with General Conditions, as previously stated herein.
2. Termination by the Owner/Grantee shall be permitted in accordance with General Conditions, as previously stated herein.
3. Contractor and all subcontractors with contracts in excess of \$10,000 shall abide by the requirements under Executive Orders No. 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), including specifically the provisions of equal opportunity clause and submittal of written affirmative action program. The Contractor must certify that segregated facilities are not provided or maintained.
4. Section 3 of the Housing and Urban Development Act of 1968: Requires that, to the greatest extent feasible, opportunities for training and employment arising from CDBG will be provided to low-Income persons residing in the program service area. Also, to the greatest extent feasible, contracts for Work (all types) to be performed in connection with CDBG will be awarded to business concerns that are located in or owned by persons residing in the program service area.
5. Contractors and subcontractors must comply with Policy stated herein pertaining to Minority/Women's Business Enterprise to ensure the inclusion to the maximum extent possible.
6. Contractor and all subcontractors shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).
7. Contractor and all subcontractors with contracts in excess of \$2,000 shall comply with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).

8. Contractor and all subcontractors with contracts in excess of \$2,000 shall comply with Sections 103 and 107 of the Contractors Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
9. Contractor shall comply with requirements and regulations pertaining to reporting.
10. Contractor shall comply requirements and regulation pertaining to patent rights in accordance with General Conditions as previously stated herein.
11. Contractor shall pay applicable royalties and license fees pertaining to copy rights and rights in data. Contractor shall defend all suits or claims for the infringement thereof and shall save the Owner harmless from loss on account thereof as previously stated herein.
12. Contractor shall allow access by the Owner/Grantee, the sub-grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representative to any books, documents, papers, and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
13. Contractor shall retain all required records for three years after final payments and all other pending matters are closed.
14. Contractor and all subcontractors with contracts in excess of \$100,000 shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (41 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
15. Contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
16. Debarred contractors: In accordance with 24 CFR Part 5, CDBG funds may not be used to directly or indirectly employ, award contracts to or otherwise engage the services of any contractor or sub-recipient during any period of debarment, suspension or placement of ineligibility status.
17. Contractor shall comply with Buy America requirements mandated by the Surface Transportation Assistance Act of 1982 (49 CFR Ch. VI Part 661).

## **SIGNATURE OF PARTIES**

As evidence of this Contract to the preceding terms and conditions set forth herein, the Parties affix their authorized signatures hereto:

ATTEST: \_\_\_\_\_ Name of Company \_\_\_\_\_

\_\_\_\_\_  
Corporate Secretary/Authorized Agent

By: \_\_\_\_\_

(Signature) of Corporate Officer

Its: \_\_\_\_\_

Title

ATTEST:

CITY OF HAMPTON, VIRGINIA

\_\_\_\_\_  
City Clerk

(Signature) \_\_\_\_\_

City Manager/Authorized Designee

OFFICE OF CITY ATTORNEY

Approved as to legal form and sufficiency

Date: \_\_\_\_\_

\_\_\_\_\_  
Deputy City Attorney

STATE OF

CITY/COUNTY OF \_\_\_\_\_, to-wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012,

by name of officer to sign, title, of name of company,

a Corporation on its behalf. He/She is personally known to me or has

produced \_\_\_\_\_ as proper identification.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

Registration No. \_\_\_\_\_

## PROCUREMENT OFFICE

Division of Finance  
Community, Municipal Services/Education  
Hampton, Virginia

### CONTRACT PERFORMANCE AND PAYMENT BOND PROJECT NO. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS: That, we

\_\_\_\_\_ a  
(Name of Contractor)

\_\_\_\_\_,  
(Corporation, Partnership or Individual)

hereinafter called "Principal" and \_\_\_\_\_,  
(Surety)

of \_\_\_\_\_, State of \_\_\_\_\_,

hereinafter called the "Surety", are by this performance and payment bond held and firmly bound unto \_\_\_\_\_

\_\_\_\_\_ hereinafter called "City", in the penal sum under each bond of

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that: Whereas, the Principal entered into a certain contract with the City, dated the \_\_\_\_\_ day of \_\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### PERFORMANCE

NOW, THEREFORE, if the said principals shall well and faithfully do and perform the things agreed by him to be done and performed and shall comply with all terms of the aforesaid Contract and plans and specifications, advertisement, proposal, made a part hereof and shall maintain and replace all defective work under this Contract for a period of one (1) year from its acceptance, and shall protect and save harmless the actions of every kind and description arising from injury or damage to persons and property in the prosecution of said work, or in the failure to properly safeguard the same, and from all claims arising under the workman's compensation laws or from infringement of any patent rights, then this obligation shall be void; otherwise to remain in full force and virtue.

## PAYMENT

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligation on this performance and payment bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the City and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

CONTRACT PERFORMANCE AND PAYMENT BOND  
PROJECT NO. \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused their names to be hereunto subscribed and affixed by their officers in that behalf duly authorized this \_\_\_\_ day of \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused their names to be hereunto subscribed and affixed by their officers in that behalf duly authorized this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_

(For use by an individual  
trading under trade name) \_\_\_\_\_

\_\_\_\_\_  
(For use by an individual  
trading under trade name)  
Trading as \_\_\_\_\_

\_\_\_\_\_  
(For use by partnership) \_\_\_\_\_  
(Partnership Name)

\_\_\_\_\_  
(Partner)

\_\_\_\_\_  
(For use by corporation) \_\_\_\_\_  
(Corporate Name)

By \_\_\_\_\_  
(Corporate Officer Signature)

\_\_\_\_\_  
(Indicate Official Position)

\_\_\_\_\_  
Surety  
By \_\_\_\_\_ (Seal)  
Attorney-in-Fact

Countersigned: \_\_\_\_\_  
Resident Virginia Agent                      Registration No.

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

NOTE: Submit Certificate of Power-of-Attorney with Bond



RETAINED FUNDS  
ESCROW AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ by, between and among the City of Hampton, Virginia (), \_\_\_\_\_ (Contractor),

\_\_\_\_\_ (Name of Bank),  
\_\_\_\_\_ (Address of Bank), a trust company, bank, or savings and loan institution with its principal office located in the Commonwealth (hereinafter referred to collectively as "Bank") and \_\_\_\_\_ ("Surety") provides:

I.

The City and the Contractor have entered into a contract with respect to:

\_\_\_\_\_ ("the contract").

This Agreement is pursuant to, but in no way amends or modifies, the contract. Payments made hereunder or the release of funds from escrow shall not be deemed approval or acceptance of performance by the Contractor.

II.

In order to assure full and satisfactory performance by the Contractor of its obligations under the contract, the City is required thereby to retain certain amounts otherwise due the Contractor. The Contractor has, with the approval of the City, elected to have these retained amounts held in escrow by the Bank. This agreement sets forth the terms of the escrow. The Bank shall not be deemed a party to, bound by, or required to inquire into the terms of, the contract or any other instrument or agreement between the City and the Contractor.

III.

The City shall from time to time pursuant to its contract pay to the Bank amounts retained by it under the contract. Except as to amounts actually withdrawn from Escrow by the City, the Contractor shall look solely to the Bank for the payment of funds retained under the contract and paid by the City to the Bank.

The risk of loss by diminution of the principal of any funds invested under the terms of this contract shall be solely upon the Contractor.

Funds and securities held by the Bank pursuant to this Escrow Agreement shall not be subject to levy, garnishment, attachment, lien, or other process whatsoever. Contractor agrees not to assign, pledge, discount, sell or otherwise transfer or dispose of his interest in the escrow account or any part thereof, except to the Surety.

IV.

Upon receipt of checks drawn by the City and made payable to it as escrow agent, the Bank shall promptly notify the Contractor, negotiate the same and deposit or invest and reinvest the proceeds in approved securities in accordance with the written instructions of the Contractor. In no event shall the Bank invest the escrowed funds in any security not approved.

V.

The following securities, and none other, are approved securities for all purposes of this Agreement.

- (d) United States Treasury Bonds, United States Treasury Notes, United States Treasury Certificates of Indebtedness or United States Treasury Bills.
- (e) Bonds, notes and other evidences of indebtedness unconditionally guaranteed as to the payment of principal and interest by the United States,

- (f) Bonds or notes of the Commonwealth of Virginia,
- (g) Bonds of any political subdivision of the Commonwealth of Virginia, if such bonds carried, at the time of purchase by the Bank or deposit by the Contractor, a Standard and Poor's or Moody's Investors Service rating of at least "A" and
- (h) Certificates of deposit issued by commercial banks located within the Commonwealth, including, but not limited to, those insured by the Bank and its affiliates.
- (i) Any bonds, notes, or other evidences of indebtedness listed in Sections (1) through (3) may be purchased pursuant to a repurchase agreement with a bank, within or without the Commonwealth of Virginia having a combined capital, surplus and undivided profit of not less than \$25,000,000, provided the obligation of the Bank to repurchase is within the time limitations established for investments as set forth herein. The repurchase agreement shall be considered a purchase of such securities even if title, and/or possession of such securities is not transferred to the Escrow Agent, so long as the repurchase obligation of the Bank is collateralized by the securities themselves, and the securities have on the date of the repurchase agreement a fair market value equal to at least 100% of the amount of the repurchase obligation of the Bank, and the securities are held by a third party, and segregated from other securities owned by the Bank.

No security is approved hereunder, which matures more than five years after the date of its purchase by the Bank or deposit by the Contractor.

#### VI.

One of the following methods may be used to withdraw funds from the escrow account:

- The Contractor may from time to time withdraw the whole or any portion of the escrow funds by depositing with the Bank approved securities listed in Section V above in an amount equal to, or in excess of the amount so withdrawn. Any securities so deposited or withdrawn shall be valued at such time of deposit or withdrawal at the lower of par or market value, the latter as determined by the Bank. Any securities so deposited shall thereupon become a part of the escrowed fund.
- Upon receipt of a direction signed by the City Manager or Director of Finance, the Bank shall pay the principal of the fund, or any specified amount thereof, to the City . Such payment shall be made in cash as soon as is practicable after receipt of the direction.
- Upon receipt of a direction signed by the City Manager or Director, the Bank shall pay and deliver the principal of the fund, or any specified amount thereof, the Contractor, in cash or in kind, as may be specified by the Contractor. Such payment and delivery shall be made as soon as is practicable after receipt of the direction.

#### VII.

For its services hereunder the Bank shall be entitled to a reasonable fee in accordance with its published schedule of fees or as may be agreed upon by the Bank and the Contractor. Such fee and any other costs of administration of this Agreement shall be paid from the income earned upon the escrowed fund and, if such income is not sufficient to pay the same, by the Contractor.

VIII.

The net income earned and received upon the principal of the escrowed fund shall be paid over to the Contractor in quarterly or more frequent installments. Until so paid or applied to pay the Bank's fee or any other costs of administration such income shall be deemed a part of the principal of the fund.

IX.

The Surety undertakes no obligation hereby but joins in this Agreement for the sole purpose of acknowledging that its obligations as surety for the Contractor's performance of the Contract are not affected hereby.

WITNESS the following signatures, all as of the day and year first above written.

CITY OF HAMPTON, VIRGINIA

BY \_\_\_\_\_  
MANAGER

ATTEST:

\_\_\_\_\_  
CLERK

\_\_\_\_\_  
CONTRACTOR

BY \_\_\_\_\_  
OFFICER, PARTNER OR CITY

\_\_\_\_\_  
BANK

BY \_\_\_\_\_  
PRESIDENT/VICE-PRESIDENT

\_\_\_\_\_  
SURETY

BY \_\_\_\_\_  
ATTORNEY-IN-FACT

## PRE-BID QUESTION FORM

**I.T.B. 13-42/A**

**DATE:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**COMPANY:** \_\_\_\_\_

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**SPECIFICATION SECTION** \_\_\_\_\_ **PARAGRAPH** \_\_\_\_\_

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**A separate form must be used for each question. Submit all Pre-Bid Question Forms to the City of Hampton Procurement Office, fax number (757) 727-2207. All questions are due in the Procurement Office no later than 12:00 p.m. (Noon) on Monday, January 28, 2013. NO EXCEPTIONS.**

Contractor Questionnaire Form (ITB #13-42/A)

If requested by the City, the following questions shall be answered in full by the Bidder, and returned to the City within 72 hours.

1. Name of Company: \_\_\_\_\_

Trade Name (if different from Company Name) \_\_\_\_\_

Principal Office Address: \_\_\_\_\_

\_\_\_\_\_

Telephone No (s). \_\_\_\_\_

Fax No(s). \_\_\_\_\_

Email Address(es) \_\_\_\_\_

a. If a Corporation, answer the following:

When Incorporated: \_\_\_\_\_

What State: \_\_\_\_\_

Virginia State Corporation Commission # \_\_\_\_\_

b. If an Unincorporated Organization, answer the following:

Date of Organization: \_\_\_\_\_

Names and addresses of City's or

Members: \_\_\_\_\_

Type and State of Organization: \_\_\_\_\_

c. If a Partnership, state whether the Partnership is General or Limited:

\_\_\_\_\_

Names and Addresses of City's or Partners:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. Experience:
- How many years has this Bidder been in business as a Contractor under its present business name? \_\_\_\_\_
  - What prior names of this Bidder, if any?  
\_\_\_\_\_
3. How many years experience in this type of construction work has this Bidder have?
- As a Contractor? \_\_\_\_\_
  - As a Subcontractor? \_\_\_\_\_
4. Provide a list of uncompleted Contracts/Projects at present held by this Bidder? (attach supplemental sheet if necessary)

Contract/Project	Type of Work	Amount	% Complete

5. List the Bidder's crew foremen and supervisors proposed for this Project and their years of related experience:

Name	Years of Experience	Dates of Employment with Bidder

6. What construction equipment does this Bidder own that is available for the proposed work? (attach supplemental sheet if necessary)

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7. Does this Bidder plan to subcontract any part of this work? If so, list name, address, years experience, and type and amount of work to be performed by each subcontractor.

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8. Provide a list of projects similar in character and scope to the Work specified under this Contract which have been successfully completed by this Bidder during the past three years. (attach supplemental sheet if necessary)

(The term “completed” means accepted and final payment received from the City or authorized representative)

Location & Type of Work	City's Name and Address	Contact person (name and telephone)	Date Completed	Contract Price

9. Have you ever performed work for a municipal corporation, local governing body, or similar agency previously? (If all such bodies are listed under 8, this question need not be completed.)

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10. Bidder Responsibility:

- a. Has this Bidder ever failed to complete any work awarded to it?\_\_\_\_\_ If yes, give name of City, name of Bonding Company and circumstances:

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- b. Is this Bidder debarred by the Federal Government or by the Commonwealth of Virginia or by any other state, or by any town, , or county?

Yes\_\_\_\_\_ No\_\_\_\_\_ If yes, please provide details:



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- c. Has this Bidder ever had any judgements entered against it for breach of contract for construction?  
\_\_\_\_\_ if yes, please provide details:

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- d. Give a summary of your financial statement. (List assets and liabilities, use an insert sheet if necessary)

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11. State approximate largest dollar volume of work performed by this Bidder in one year:

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12. Give two (2) Banking Institution References:

- a. Name: \_\_\_\_\_

Address: \_\_\_\_\_

Credit Available: \_\_\_\_\_

- b. Name: \_\_\_\_\_

Address: \_\_\_\_\_

Credit Available: \_\_\_\_\_

13. List three (3) material suppliers and amount of credit available:

- a. Name: \_\_\_\_\_

Address: \_\_\_\_\_

Credit Available: \_\_\_\_\_

- b. Name: \_\_\_\_\_

Address: \_\_\_\_\_

Credit Available: \_\_\_\_\_

- c. Name: \_\_\_\_\_

Address:\_\_\_\_\_

Credit Available:\_\_\_\_\_

14. List insurance coverage (attach certificate of insurance in required Project amount)

15. Bonding reference: List surety company and highest coverage:

\_\_\_\_\_

16. Have you or your authorized representative, personally inspected the location of the proposed Work, and do you have a clear understanding of the requirements of the Bid Documents?

\_\_\_\_\_

The undersigned hereby authorizes and consents to any person, firm or corporation to furnish any information requested by the City in verification of this statement of contractor's qualifications. Also, if it is the apparent low Bidder, the undersigned hereby agrees to furnish the City upon request, a complete and current financial statement:

Contractor:\_\_\_\_\_

By:\_\_\_\_\_ (Sign and Print Name)

Title:\_\_\_\_\_

\_\_\_\_\_ Date:\_\_\_\_\_

## **THE FOLLOWING DOCUMENTS ARE BID RESPONSE DOCUMENTS**

**Please return sections listed below with your bid submittal**

- 1. Response Form For Project ITB No. 13-42/A**
- 2. Pricing Sheet**
- 3. Certification Regarding Debarment**
- 4. Notice of Escrow Option (2 pages)**
- 5. Minority and Woman-Owned Business Program (3 Pages)**
- 6. Frequently Asked Questions (2 Pages)**
- 7. Response Form For Project Form #1**
- 8. Response Form For Project Form #2**
- 9. Anti-Collusion/Nondiscrimination/Drug-Free Workplace  
Requirements**
- 10. Addenda Acknowledgement**
- 11. 10 Day Notice to Commence Work**

**RESPONSE FORM FOR PROJECT ITB NO. 13-42/A**

In compliance with solicitation dated Tuesday, January 15, 2013 the undersigned proposes to furnish all labor equipment, and materials and perform all work in strict accordance with all requirements for:

**EXTERIOR WALL REPAIRS  
(FLEET MANAGEMENT & COMMUNITY SERVICES BUILDINGS)**

The above scope of work to be performed at the dollar amount(s) stated herein.

The undersigned agrees and assures that:

- . All prices stated herein shall be firm for a period of \_\_\_\_\_ calendar days. (90 days minimum)
  - . If bidder's response is accepted and a purchase order issued, bidder will accept same and fulfill requirements in strict compliance with all terms and conditions.
  - . If in acceptance of bidder's response, bidder is asked to execute a formal Contract; and/or required to furnish a payment bond and a performance bond; and/or a certificate of insurance, bidder will execute and furnish same within ten (10) calendar days of such notice, and that failure to do so will mean forfeiture of any surety bidder may have been required to post as part of bidder's response.
  - . Bidder's business is organized as a stock or non stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership and is authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the code of Virginia, as amended, or as otherwise required by law.
  - . If a Contractor, Bidder is registered with the Commonwealth of Virginia as a Class \_\_\_\_\_; Registration No. \_\_\_\_\_.
- \*\*\*\*\*In Accordance with §54.1-1115, A1. and A6 Bidder should include a copy of Contractors License with Bid Response.\*\*\*\*\***
- . Bidder meets all licensing and permit requirements to conduct business in the City of Hampton, Virginia

**RESPONSE FORM FOR PROJECT ITB NO: 13-42/A**

Submitted By:

Company Name \_\_\_\_\_

Street Address \_\_\_\_\_

/State/Zip \_\_\_\_\_

Phone \_\_\_\_\_ FAX \_\_\_\_\_

Date: \_\_\_\_\_

Federal ID # \_\_\_\_\_ SCC Registration # \_\_\_\_\_

DUNS # \_\_\_\_\_

The BIDDER, in compliance with the Request to repair damaged masonry walls, replace roof system, and provide miscellaneous structural repairs and HEREBY PROPOSE to furnish all labor, materials and equipment, and to complete the project in accordance with the Contract Documents, within the time set forth therein, and for the Bid price stated herein. Said price shall cover all expenses incurred in performing the work required by the Contract Documents, of which this proposal is a part.

Discrepancies between multiplication of units of work and unit prices will be resolved in favor of unit prices, discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in the favor of the correct sum. Discrepancies between words and figures will be resolved in favor of words.

Total Contract Bid Price (Written) \_\_\_\_\_

Figure \$ \_\_\_\_\_

Unit Price for Replacement of Additional Steel Roof Deck (Written) \_\_\_\_\_

Figure \$ \_\_\_\_\_

### BID SHEET

<u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit of Measure</u>	<u>Unit Price</u>	<u>Extended Price</u>
1	WALL REPAIRS – FLEET MANAGEMENT BUILDING	1	LOT		
2	ROOF REPAIRS – FLEET MANAGEMENT BUILDING	1	LOT		
3	WALL REPAIRS – COMMUNITY SERVICES BUILDING	1	LOT		
<b>TOTAL BID PRICE</b>					

### UNIT PRICES

4	REPLACEMENT OF ADDITIONAL STEEL ROOF DECK (MIN. AMOUNT OF 16 S.F.)	1	SQUARE FOOT		N/A
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**RESPONSE FORM FOR PROJECT ITB NO. 13-42/A**

**CERTIFICATION REGARDING DEBARMENT**

This is to certify that this person/firm/corporation is not now debarred by the Federal Government or by the Commonwealth of Virginia or by any other state, or by any town, city, or county, from submitting Bids on contracts for construction covered by this solicitation, nor are they an agent of any person or entity that is now so debarred.

\_\_\_\_\_  
Name of Official

\_\_\_\_\_  
Title

\_\_\_\_\_  
Firm or Corporation

\_\_\_\_\_  
Date

**Notice of Escrow Option  
for Retained Funds**

If this is a bid for construction as defined in Virginia Code Section 2.2-4334 in the amount of \$200,000.00 or more, I/we elect to utilize the escrow account procedure described in the provisions of this proposal if determined to be the successful low bidder(s) \_\_\_\_\_  
(write "yes" or "no"). Date: \_\_\_\_\_

Any subcontract for such public project which provides for similar progress payments shall be subject to the provisions of this section.

**OPTIONAL PROVISIONS FOR  
RETAINED FUNDS  
ON CERTAIN CONSTRUCTION CONTRACTS**

- At the time the Contractor submits a Bid Response the Contractor shall have the option to use the escrow account procedure for utilization of retained funds by so indicating in the space provided in the response documents. In the event the Contractor elects to use the escrow account procedure, the "Escrow Agreement" form included in the Bid package shall be executed and submitted to the within 15 calendar days after notification of award of the bid. If the "Escrow Agreement" form is not submitted as noted herein before, the Contractor shall forfeit such rights to the use of the escrow account procedure. In order to have retained funds paid to an escrow agent, the Contractor, the escrow agent and the surety shall execute the "Escrow Agreement" form and submit same to the City of Hampton, Virginia for approval. The Contractor's escrow agent shall be a trust company, bank or savings and loan institution with its principal office located in the Commonwealth of Virginia. The "Escrow Agreement" form shall contain the complete address of the escrow agent and surety, and the executed "Escrow Agreement" will be authority for the City of Hampton, Virginia to make payment of retained funds to the escrow agent. After approving the agreement, the City of Hampton, Virginia will pay to the escrow agent the funds retained as provided herein except that funds retained for lack of progress or other deficiencies on the part of the Contractor will not be paid to the escrow agent. The escrow agent may, in accordance with the stipulations contained in the "Escrow Agreement", invest the funds paid into the escrow account and pay earnings on such investments to the Contractor or release the funds to the Contractor provided such funds are fully secured by approved securities.
- Retained funds invested and securities held as collateral for retainage may be released only as and when directed by the City . When the final estimate is released for voucher, the City will direct the escrow agent to settle the escrow account by paying the Contractor or the monies due them as determined by the City . The City reserves the right to recall retained funds and to release same to the surety upon receipt of written request from the Contractor or in the event of default.
- This option shall be applicable only to contractors with Contracts for \$200,000.00, or more, for the construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures and the installation of water, gas, sewer lines, and pumping stations.
- This option shall not apply to contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter. The installation or maintenance of



telephone, telegraph, or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.

- Should the “Escrow Agreement” include payment of interest on retained funds, the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay the specified penalty for each day exceeding the completion date stated in the contract.
- Any subcontract for such public project which provides for similar progress payments shall be subject to the provisions of this section.

It is the goal of the City to track participation of Small Businesses (SBE), Minority Businesses (MBE) and Woman-owned Businesses (WBE). You are requested to voluntarily report the total dollars which will be subcontracted to each of the business classifications pertaining to this Contract. List the dollar figures separately for each general classification.

If you do not plan to subcontract, place zeros in the appropriate spaces.

Total SBE Dollars to be Subcontracted	\$_____
Total MBE Dollars to be Subcontracted	\$_____
Total WBE Dollars to be Subcontracted	\$_____
Total Non Minority Dollars to be Subcontracted	\$_____

This information will enable the City to determine the amount of business the City does with small, minority and woman-owned businesses. With your cooperation it will be more possible to fully understand and evaluate the City's performance in this important segment of the market.

## MINORITY AND WOMAN-OWNED BUSINESS PROGRAM

The City of Hampton is implementing new strategies to solicit and utilize minority and woman-owned businesses. To encourage and sustain utilization of minority and woman owned businesses, subcontracting goals have been established for contracts of \$100,000 and above. The minority and woman-owned subcontracting goals are established by business categories.

The subcontracting goals established for this contract include:

Minorities (MBE) 4.34% Non-minority women (WBE) 3.82%

Solicitation meetings will be held on contracts \$100,000 and above to assist in attaining the contract minority and woman owned business goals.

The City requires that each minority and woman-owned business become a certified Small, Woman and Minority owned business (SWAM) by the State Department of Minority Business Enterprises (DMBE).

Any minority or woman-owned business that is not a certified SWAM vendor will not be considered for meeting the contract goals as established or included in the utilization data.

Prime Contract solicitations require bidders to include, as part of their proposal or bid, a subcontracting plan to include certified minority and woman-owned vendors during the course of the contract work.

- A listing of all certified minority and woman-owned subcontractor vendors
- The dollar value of each subcontract
- A description of type of work to be performed under each contract
- SWAM certification number and contact information for each minority and woman-owned firm

Prime Contractor subcontractor/supplier solicitation information will be submitted to document firms contacted for quotes.

Prime Contractor solicitations and resulting contracts will require each successful bidder to report actual subcontract payments quarterly to the Procurement Department to ensure accurate utilization records.

All bids submitted must include a subcontracting plan to be considered when determining the lowest responsible and responsive bidders by the City.

Changes to the subcontracting plan will require approval from the Procurement Office and Minority Business Program Office during the life of the contract.

Failure of a contractor to adhere to its subcontracting plan may under certain circumstances, result in future loss of contracts and/or debarment from bidding by the City of Hampton. In these cases contractors will be requested to submit documentation of good faith efforts used to meet their subcontracting plan. Determination of efforts will be made on an individual contract basis. It is recommended that contractors pre-qualify or determine the subcontractors' capabilities prior to subletting work.

Good Faith efforts are documented reasonable steps taken to achieve a contract goal. These efforts are those taken by a bidder actively and aggressively trying to obtain the established goal. Mere pro forma efforts are not good faith efforts. The following is a list of types of actions which are considered good faith efforts. It is not intended to be a mandatory checklist nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- Soliciting through reasonable and available means (pre-bid meetings, advertisements, phone calls, community organizations, etc.)
- Selecting portions of the work to be subcontracted out to increase the likelihood that a contract goal can be achieved.
- Providing interested firms with information necessary to respond in a timely manner to a request for solicitation.
- Effectively using the services of available minority and woman-owned organizations, local, state and federal small business assistance offices, etc.

Documentation of such efforts can include a listing of M/WBE firm names, contact information, description of information provided and dates received quotes, etc.

(Please note: this requirement should not be construed as authorizing or directing the exclusion of non-SWAM owned businesses; rather, the purpose is to include as many qualified businesses as possible).

Any Prime Contractor that is a DMBE certified minority or woman-owned vendor that is awarded a contract of \$100,000 and above is not required to submit the above information as the Prime Contractor is itself such a certified business. This does not, however, relieve such a Prime from the obligation to achieve both contract goals during the life of the contract. The

City of Hampton reserves the right to review subcontracting plans and good faith efforts to ensure that both goals are achieved.

The City of Hampton will utilize a performance evaluation process that will include documenting the quality of work and business practices of all vendors used on contracts of \$100,000 and above.

The following forms are attached for use by bidders to ensure consistent submission of required data. These forms must be submitted with the proposal response.

## Frequently Asked Questions (FAQ's) - MBE & WBE Goals

**1. *How do I know if there is a goal on a project?***

It will be mentioned in the ITB (Invitation to bid) or RFP (Request for Proposal). Bidders are encouraged to utilize certified SWaM vendors towards their efforts in meeting the MBE and WBE goals.

**2. *What is a SWaM vendor?***

SWaM is the acronym for Small, Women and Minority owned businesses. A SWaM vendor is a business that has been certified by the Virginia Department of Minority Business Enterprise (DMBE) and is listed in the SWaM Vendor Directory.

**3. *Where can I find a list of SWaM certified MBE and WBE businesses?***

A list of certified SWaM businesses can be found at the following websites:

- City of Hampton Small Business Directory: [www.hampton.gov/ed/minority\\_business\\_office.html](http://www.hampton.gov/ed/minority_business_office.html)  
The directory allows searches by SWaM type, city location and description of work.
- Virginia Department of Minority Business Enterprise: [www.dmb.state.va.us](http://www.dmb.state.va.us)  
The DMBE website allows searches by company name, SWaM type, NIGP commodity code or description and Zip & NIGP Code.

**4. *Is it possible to meet both the MBE and WBE goals utilizing one contractor?***

No. It is not possible to meet both the MBE and WBE goals utilizing one contractor. These are two separate goals; one for MBE and one for WBE and are independent of each other.

**5. *I have worked with a minority owned business in the past, but they are not SWaM certified, can I still use them towards meeting the goal?***

No. The City requires that each minority and woman-owned business become SWaM certified by DMBE. Any minority or woman-owned business that is not a certified SWAM vendor will not be considered for meeting the contract goals as established or included in the City utilization data.

**6. *I am a Minority /Woman Owned Business, but I am not SWaM certified, how do I get certified?***

As found on the DMBE website, there are four Steps to get certified: Complete an online application, Print out your application, Collect your supporting documentation on the checklist and send the signed application form to the DMBE. Visit their website at [www.dmb.state.va.us](http://www.dmb.state.va.us) to start the process.

**7. *I am a SWaM certified minority / woman owned business, do I still need to meet the MBE and WBE goals?***

Yes. The City of Hampton encourages all prime contractors bidding on a project to document efforts and meet the goals.

**8. *Can I utilize vendors certified as a Small Business (S) that I found on the City of Hampton's / Department of Minority Business Enterprise directory?***

You can, but it won't be counted towards meeting the MBE and WBE goals. To meet the MBE goal a business needs to be certified as a Minority Owned Business Enterprise (M), Minority Owned Small Business Enterprise (MS). To meet the WBE goal a business needs to be certified as a Woman Owned Business Enterprise (W) or Woman Owned Small Business Enterprise (WS).

**9. Which forms do I have to turn in at bid opening?**

There are 3 forms in your bid document pertaining to the Minority Business Program. At time of bid opening, submit Attachment 'A' (Subcontracting Plan) and Attachment 'B' (Solicitation Information). If awarded a contract, Attachment 'C' (Payment Information) will need to be submitted quarterly during the course of the contract.

**10. Which is the official form to list the Minority and Woman Owned subcontractors I am proposing to utilize on the project?**

Fill out Attachment 'A' (Subcontracting Plan) completely. Bidders must include this form as part of their proposal or bid to list certified minority and woman-owned vendors they plan to utilize on the project. This form should include information on:

- The dollar value and percentage for each subcontractor
- A description of type of work to be performed
- SWaM certification number and contact information for each minority and woman-owned firm

**11. I contacted a SWaM certified minority/women owned business, but I won't be utilizing them, how do I document this?**

Fill out Attachment 'B' (Solicitation Information) completely.

**12. How do I document good faith efforts?**

Fill out Attachment 'B' (Solicitation Information) completely. Documentation of such efforts can include a listing of M/WBE firm names, contact information, description of information provided and dates received quotes, etc.

**13. If awarded a contract, on what form do I report the payments made to subcontractors?**

Successful bidders on City contracts will be required to report actual subcontract payments quarterly to the City Procurement Department to ensure accurate utilization records. Fill out Attachment 'C' (Payment Information) completely to report this information.

**14. At what point must a vendor be SWaM certified in order to be counted towards meeting the MBE and WBE goals?**

By the bid opening date when an ITB (Invitation to bid) or RFP (Request for Proposal) is due.

**15. Who can I contact if I have specific questions or need additional help finding certified minority or woman owned businesses?**

You can contact the City of Hampton's Minority Business Office located within the Economic Development Department at (757) 728-5171.

# RESPONSE FORM FOR PROJECT ITB NO. 13-42/A

## FORM #1

### CITY OF HAMPTON

#### SUBCONTRACTOR/SUPPLIER UTILIZATION FORM POTENTIAL MINORITY AND WOMAN-OWNED BUSINESS PARTICIPATION

Project no. \_\_\_\_\_ Date submitted: \_\_\_\_\_

Bid goal % \_\_\_\_\_ Total Contract Value \_\_\_\_\_

Firm name	Certification no.	Type (M/W)	Percent bid	Dollar value	Type of work

I/We propose that the certified DMBE businesses will be used on this contract as stated herein and assure that during the life of the contract. I/We will meet the goal established by the City of Hampton.

Bidder \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_

## RESPONSE FORM FOR PROJECT ITB NO. 13-42/A

**Form #2**

### **CITY OF HAMPTON SUBCONTRACTOR/SUPPLIER SOLICITATION AND UTILIZATION FORM (ALL)**

Project no. \_\_\_\_\_ Date \_\_\_\_\_

The bidder certifies that this form accurately represents its solicitation and utilization or non-utilization as indicated of the DMBE certified minority and woman-owned businesses listed below for performance of work on this project. The bidder certifies that he/she has had direct contact (email, fax, phone) with the named firms regarding performing work on this project.

Bidder \_\_\_\_\_ Signature \_\_\_\_\_

Vendor no.	Name of firm	Telephone no.	SWAM Yes/No	Utilized Yes/No



## **Response form for ITB No. 13-42/A**

### **ANTI-COLLUSION/NONDISCRIMINATION/DRUG-FREE WORKPLACE REQUIREMENTS**

#### **ANTI-COLLUSION CLAUSE:**

IN THE PREPARATION AND SUBMISSION OF THIS PROPOSAL, SAID BIDDER DID NOT EITHER DIRECTLY OR INDIRECTLY ENTER INTO ANY COMBINATION OR ARRANGEMENT WITH ANY PERSON, FIRM OR CORPORATION, OR ENTER INTO ANY AGREEMENT, PARTICIPATE IN ANY COLLUSION, OR OTHERWISE TAKE ANY ACTION IN VIOLATION OF THE SHERMAN ACT (15 U.S.C. SECTION 1), SECTIONS 59.1-9.1 THROUGH 59.1-9.17 OR SECTIONS 59.1-68.6 THROUGH 59.1-68.8 OF THE CODE OF VIRGINIA.

THE UNDERSIGNED BIDDER HEREBY CERTIFIES THAT THIS AGREEMENT, OR ANY CLAIMS RESULTING THEREFROM, IS NOT THE RESULT OF, OR AFFECTED BY, ANY ACT OF COLLUSION WITH, OR ANY ACT OF, ANOTHER PERSON OR PERSONS, FIRM OR CORPORATION ENGAGED IN THE SAME LINE OF BUSINESS OR COMMERCE; AND, THAT NO PERSON ACTING FOR, OR EMPLOYED BY, HAS AN INTEREST IN, OR IS CONCERNED WITH, THIS PROPOSAL; AND, THAT NO PERSON OR PERSONS, FIRM OR CORPORATION OTHER THAN THE UNDERSIGNED, HAVE, OR ARE, INTERESTED IN THIS PROPOSAL.

#### **DRUG-FREE WORKPLACE:**

DURING THE PERFORMANCE OF THIS CONTRACT, THE SUCCESSFUL BIDDER AGREES TO (I) PROVIDE A DRUG-FREE WORKPLACE FOR THE SUCCESSFUL BIDDER'S EMPLOYEES; (II) POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, A STATEMENT NOTIFYING EMPLOYEES THAT THE UNLAWFUL MANUFACTURE, SALE, DISTRIBUTION, DISPENSATION, POSSESSION, OR USE OF A CONTROLLED SUBSTANCE OR MARIJUANA IS PROHIBITED IN THE SUCCESSFUL OFFEROR'S WORKPLACE AND SPECIFYING THE ACTIONS THAT WILL BE TAKEN AGAINST EMPLOYEES FOR VIOLATIONS OF SUCH PROHIBITION; (III) STATE IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE SUCCESSFUL OFFEROR THAT THE SUCCESSFUL OFFEROR MAINTAINS A DRUG-FREE WORKPLACE; AND (IV) INCLUDE THE PROVISIONS OF THE FOREGOING CLAUSES IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUCCESSFUL OFFEROR OR VENDOR.

FOR THE PURPOSE OF THIS SECTION, "DRUG-FREE WORKPLACE" MEANS A SITE FOR THE PERFORMANCE OR WORK DONE IN CONNECTION WITH A SPECIFIC CONTRACT AWARDED TO A SUCCESSFUL OFFEROR IN ACCORDANCE WITH FEDERAL LAW, THE EMPLOYEES OF WHOM ARE PROHIBITED FROM ENGAGING IN THE UNLAWFUL MANUFACTURE, SALE, DISTRIBUTION, DISPENSATION, POSSESSION OR USE OF ANY CONTROLLED SUBSTANCE OR MARIJUANA DURING THE PERFORMANCE OF THE CONTRACT.

#### **EMPLOYMENT DISCRIMINATION BY THE SUCCESSFUL OFFEROR SHALL BE PROHIBITED:**

1. DURING THE PERFORMANCE OF THIS CONTRACT, THE SUCCESSFUL BIDDER AGREES AS FOLLOWS:
  - a. THE BIDDER, SHALL NOT DISCRIMINATE AGAINST ANY EMPLOYEE OR APPLICANT FOR EMPLOYMENT BECAUSE OF RACE, RELIGION, COLOR, SEX, NATIONAL ORIGIN, AGE, DISABILITY, OR ANY OTHER BASIS PROHIBITED BY STATE LAW RELATING TO DISCRIMINATION IN EMPLOYMENT, EXCEPT WHERE THERE IS A BONA FIDE OCCUPATIONAL QUALIFICATION REASONABLY NECESSARY TO THE NORMAL OPERATION OF THE SUCCESSFUL OFFEROR. THE SUCCESSFUL BIDDER AGREES TO POST IN CONSPICUOUS PLACES, AVAILABLE TO EMPLOYEES AND APPLICANTS FOR EMPLOYMENT, NOTICES SETTING FORTH THE PROVISIONS OF THIS NONDISCRIMINATION CLAUSE.
  - b. THE SUCCESSFUL BIDDER, IN ALL SOLICITATIONS OR ADVERTISEMENTS FOR EMPLOYEES PLACED BY OR ON BEHALF OF THE SUCCESSFUL BIDDER, SHALL STATE THAT SUCH SUCCESSFUL BIDDER IS AN EQUAL OPPORTUNITY EMPLOYER.
  - c. NOTICES, ADVERTISEMENTS, AND SOLICITATIONS PLACED IN ACCORDANCE WITH FEDERAL LAW, RULE OR REGULATION SHALL BE DEEMED SUFFICIENT FOR THE PURPOSE OF MEETING THE REQUIREMENTS OF THIS SECTION.
2. THE SUCCESSFUL BIDDER WILL INCLUDE THE PROVISIONS OF THE FOREGOING PARAGRAPHS A, B, AND C IN EVERY SUBCONTRACT OR PURCHASE ORDER OF OVER \$10,000, SO THAT THE PROVISIONS WILL BE BINDING UPON EACH SUBCONTRACTOR OR VENDOR.

**Name and Address of BIDDER:**

Date: \_\_\_\_\_ Authorized Signature \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Identification Number/Social Security Number:** \_\_\_\_\_

Is Bidder a "minority" business? ☐ Yes ☐ No

☐ African American ☐ Hispanic American

Is Bidder Woman Owned? ☐ Yes ☐ No

Is Bidder a Small Business? ☐ Yes ☐ No

Is Bidder a Faith-Based Organization? ☐ Yes ☐ No

If yes, please indicate the "minority" classification below:

☐ American Indian ☐ Eskimo ☐ Asian American ☐ Aleut ☐ Other; Please Explain:

## RESPONSE FORM FOR ITB NO. 13-42/A

### **Addenda:**

The undersigned initial acknowledges receipt of the following addenda (if applicable).

No. 1 \_\_\_\_\_

No. 2 \_\_\_\_\_

No. 3 \_\_\_\_\_

No. 4 \_\_\_\_\_

No. 5 \_\_\_\_\_

No. 6 \_\_\_\_\_

**RESPONSE FORM FOR PROJECT ITB NO. 13-42/A**

The undersigned agrees that if awarded a Contract, bidder will commence work within **10** calendar days after the date of notice to proceed letter, and that bidder will complete all work, as specified (to include codes inspection and City acceptance) **shall be completed within one hundred twenty (120) calendar days** acknowledging the City's right, per Article II, of the Contract, to assess Liquidated Damages of **\$500.00 per day.**

(For individual trading  
in his individual name) \_\_\_\_\_ Date: \_\_\_\_\_

(Print)

\_\_\_\_\_  
(Signature)

(For use by an individual  
trading under trade name) \_\_\_\_\_ Date: \_\_\_\_\_

(Print)

\_\_\_\_\_  
(Signature)

Trading as

\_\_\_\_\_  
(Print)

\_\_\_\_\_  
(Signature)

(For use by partnership) \_\_\_\_\_ Date: \_\_\_\_\_

(Partnership Name Printed)

\_\_\_\_\_  
(Partner/Signature)

(For use by a corporation) \_\_\_\_\_ Date: \_\_\_\_\_

(Corporate Name Printed)

By

\_\_\_\_\_  
(Corporate Officer Signature)

\_\_\_\_\_  
(Name Printed)

\_\_\_\_\_  
Indicate Official Position

Attest: \_\_\_\_\_

Corporate Secretary